

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
APR 20 1994
DATE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY L. BRUMLEY, a single
person; COUNTY TREASURER,
Tulsa County, Oklahoma; BOARD
OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

APR 20 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-385-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of April, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,**
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendant, Gary L.
Brumley, appears not, but makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, **County Treasurer, Tulsa**
County, Oklahoma, acknowledged receipt of Summons and Complaint
on May 13, 1993; and that Defendant, **Board of County**
Commissioners, Tulsa County, Oklahoma, acknowledged receipt of
Summons and Complaint on April 29, 1993.

The Court further finds that the Defendant, Gary L.
Brumley, was served by publishing notice of this action in the
Tulsa Daily Commerce & Legal News, a newspaper of general

circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning January 20, 1994, and continuing through February 24, 1994, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, **Gary L. Brumley**, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendant, **Gary L. Brumley**. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Neal B. Kirkpatrick, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court

to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 27, 1993; that the Defendant, Gary L. Brumley, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

The North Twenty (20) feet of Lot Nineteen (19) and all of Lot Twenty (20), Block Ten (10), PARK DALE ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on February 19, 1987, the Defendant, Gary L. Brumley, a single person, executed and delivered to Firstier Mortgage Co. his mortgage note in the amount of \$28,950.00, payable in monthly installments, with interest thereon at the rate of eight percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Gary L. Brumley, a single person, executed and delivered to Firstier Mortgage Co. a mortgage dated February 19, 1987, covering the above-described property. This mortgage was recorded on February 20, 1987, in Book 5003, Page 476, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 6, 1988, FirstTier Mortgage Co. (formerly known as Realbanc, Inc.), a Nebraska Corporation, assigned the above-described mortgage note and mortgage to Leader Federal Savings & Loan Association. This Assignment of Mortgage was recorded on September 20, 1988, in Book 5129, Page 550, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 8, 1989, Leader Federal Savings and Loan Association assigned the above-described mortgage note and mortgage to Secretary of Housing and Urban Development of Washington, D.C, his successors and assigns. This Assignment of Mortgage was recorded on March 9, 1989, in Book 5170, Page 2397, in the records of Tulsa County, Oklahoma.

The Court further finds that on March 1, 1989, the Defendant, Gary L. Brumley, entered into an agreement with the Plaintiff suspending the monthly installments due in exchange for the Plaintiff's forbearance of its right to foreclose due to such defendant's prior default in paying the installments. Superseding Agreements were reached between these same parties on March 1, 1990 (suspended payments), and June 1, 1990 (\$30.00 monthly).

The Court further finds that the Defendant, Gary L. Brumley, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Gary L. Brumley, is indebted to the Plaintiff in the principal sum of \$41,715.09, plus interest

at the rate of 8 percent per annum from April 28, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$259.45 for publication fees.

The Court further finds that the Defendants, **County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma**, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, **Gary L. Brumley, a single person**, in the principal sum of \$41,715.09, plus interest at the rate of 8 percent per annum from April 28, 1993 until judgment, plus interest thereafter at the current legal rate of 4.51 percent per annum until paid, plus the costs of this action in the amount of \$259.45 for publication fees, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **County Treasurer and Board of County Commissioners**,

Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Gary L. Brumley, a single person, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under

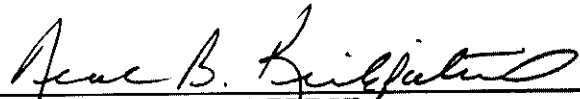
and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

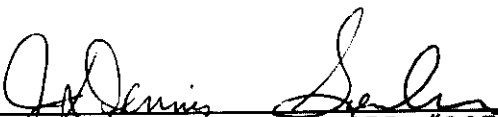
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
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County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-385-B

NBK:css

DATE **APR 20 1994**

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**TERRY N. BURCHAM; DEBORAH L.
BURCHAM; COUNTY TREASURER,
Tulsa County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,**

Defendants.

F I L E D

APR 20 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-430-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of April, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, **County Treasurer, Tulsa County,**
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, **Terry N.**
Burcham and Deborah L. Burcham, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, **Terry N. Burcham,** was served
with Summons and Complaint on March 4, 1994; that the Defendant,
Deborah L. Burcham, was served with Summons and Complaint on
July 6, 1993; that Defendant, **County Treasurer, Tulsa County,**
Oklahoma, acknowledged receipt of Summons and Complaint on
May 17, 1993; and that Defendant, **Board of County Commissioners,**
Tulsa County, Oklahoma, acknowledged receipt of Summons and
Complaint on May 11, 1993.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 27, 1993; that the Defendants, Terry N. Burcham and Deborah L. Burcham, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Twenty-four (24), WOODLAND VIEW THIRD, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on February 2, 1987, Daniel A. Winders executed and delivered to First Security Mortgage Company his mortgage note in the amount of \$73,933.00, payable in monthly installments, with interest thereon at the rate of eight percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, Daniel A. Winders and Cristy L. Winders, husband and wife, executed and delivered to First Security Mortgage Company, a mortgage dated February 2, 1987, covering the above-described property. This mortgage was recorded on February 11, 1987, in Book 5001, Page 916, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 27, 1989, First Security Mortgage Company attempted to assign the above-described mortgage note and mortgage securing it by an instrument recorded on October 4, 1989, in Book 5211, Page 2123, in the records of Tulsa County, Oklahoma; however, the name of the grantee was not shown on the face of the document. The assignment was altered by the interlineation of the name Bank of Oklahoma N.A. as the grantee and re-recorded on October 26, 1989, in Book 5216 Page 133, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 19, 1990, Bank of Oklahoma, National Association, assigned the above-described mortgage note and mortgage to Secretary of Housing and Urban Development, his successors and assigns. This Assignment of Mortgage was recorded on September 20, 1990, in Book 5278, Page 1196, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 10, 1989, Daniel A. Winders, a single person, granted a General Warranty Deed to the Defendants, Terry N. Burcham and Deborah L. Burcham, husband and wife. This deed was recorded on August 14, 1989, in Book 5200, Page 2334, in the records of Tulsa County, Oklahoma. The Defendants, Terry N. Burcham and Deborah L. Burcham, assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on October 1, 1990, the Defendants, Terry N. Burcham and Deborah L. Burcham, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the

Plaintiff's forbearance of its right to foreclose due to such defendants' default in paying the installments. A superseding agreement was reached between these same parties on July 1, 1991.

The Court further finds that the Defendants, **Terry N. Burcham and Deborah L. Burcham**, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Terry N. Burcham and Deborah L. Burcham**, are indebted to the Plaintiff in the principal sum of \$88,246.83, plus interest at the rate of 8 percent per annum from May 6, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$8.00 for recording Notice of Lis Pendens.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$40.00 which became a lien on the property as of 1991. Said lien is inferior to the interest of the Plaintiff, **United States of America**.

The Court further finds that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of

redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, Terry N. Burcham and Deborah L. Burcham, in the principal sum of \$88,246.83, plus interest at the rate of 8 percent per annum from May 6, 1993 until judgment, plus interest thereafter at the current legal rate of 4.51 ~~4.50~~ percent per annum until paid, plus the costs of this action in the amount of \$8.00 for recording Notice of Lis Pendens, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$40.00 for personal property taxes for the year 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Terry N. Burcham and Deborah L. Burcham, to satisfy the money judgment of the Plaintiff herein,

an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$40.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


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Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-430-B

NBK:css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THE UNITED STATES OF AMERICA

Plaintiff,

vs.

GENEVA JANE CANTERO EFIRD;
TOM EFIRD; JOHN CANTERO;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma;

Defendants.

Case No. 93-C-454-B

FILED

APR 19 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER and JUDGMENT

Now before the Court is the Plaintiff's Request for Entry of Default (Docket # 7) and Application for Entry of Default Judgment (Docket #9) against Defendant John Cantero.

This is an action for foreclosure of a mortgage on real property located within the Northern District of Oklahoma. Plaintiff's Complaint alleges the subject mortgage was executed by Defendant Geneva Jane Cantero and that the terms and conditions of the mortgage have been broken. On May 25, 1993, Defendant Geneva Jane Cantero executed a Disclaimer in which she disclaimed any right, title or interest in the subject real property and consented to judgment being entered against her.¹

As to Defendant John Cantero, Plaintiff's Complaint states "defendant John Cantero is named herein because he is the current resident of the Property. This defendant should be required to appear and assert any right, title, or interest which he has, or

¹ This Disclaimer was filed May 28, 1993 (Docket #4).

claims to have, in the Property or be forever barred." Upon review of the record herein, the Court finds Defendant John Cantero acknowledged receipt of Summons and Complaint on May 19, 1993; that the time within which the Defendant may answer or otherwise move as to the Complaint has expired; that the Defendant has not answered or otherwise moved²; and that the time for Defendant to answer or otherwise move has not been extended. The Court concludes Defendant John Cantero has failed to plead or otherwise defend as provided by Rule 55(a) of the Federal Rules of Civil Procedure and therefore judgment should be entered against him, as prayed for in the Complaint.

For the reasons set out herein, Plaintiff's Request for Entry of Default is MOOT and Plaintiff's Application for Entry of Default Judgment is GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant, John Cantero, has no right, title, or interest in the subject real property.

IT IS SO ORDERED, THIS 19th DAY OF APRIL, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² John Cantero did mail a letter to counsel for the Plaintiff in response to the civil summons and complaint. In this letter, Defendant stated "I never signed anything to begin with so I don't feel I need to sign a disclaimer since said property does not belong to me in the first place." Although he refuses to sign a disclaimer, Defendant appears to be disclaiming any interest in or right to the property.

APR 20 1994

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 19 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

CHERYL JASON,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN
SERVICES, Donna Shalala, Secretary,

Defendant.

92-C-1170-B

ORDER

Now before the Court is Plaintiff Cheryl Jason's appeal of the Secretary Louis W. Sullivan's denial of Social Security benefits. Ms. Jason raises the following issues on appeal: (1) Does substantial evidence support the Secretary's finding that Ms. Jason can return to her past work?; (2) Did the Administrative Law Judge ("ALJ") properly evaluate Ms. Jason's complaints of pain and (3) Did the ALJ err in his hypothetical question to the vocational expert? For the reasons discussed below, this Court affirms the Secretary's decision.

I. Standard of Review

In examining whether the Secretary erred, this Court's review is limited in scope by 42 U.S.C. § 405(g).¹ The Court's role "on review is to determine whether the Secretary's decision is supported by substantial evidence." *Campbell v. Bowen*, 822 F.2d 1518, 1521

¹ Section 405(g) reads, in part: "Any individual, after the final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow...the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive."

(10th Cir. 1987). Substantial evidence is what "a reasonable mind might deem adequate to support a conclusion." *Jordan v. Heckler*, 835 F.2d 1314, 1316 (10th Cir. 1987). A finding of "no substantial evidence" is where a conspicuous absence of credible choices or no contrary medical evidence exists. *Trimiar v. Sullivan*, 966 F.2d 1326 (10th Cir. 1992).

Grounds for reversal also exist if the Secretary fails to apply the correct legal standard or fails to provide this Court with a sufficient basis to determine that appropriate legal principles have been followed. *Smith v. Heckler*, 707 F.2d 1284, 1285 (11th Cir. 1985).²

II. Procedural History/Summary of Medical Evidence

Plaintiff applied for benefits, claiming that back problems have prevented her from working since July 25, 1988.³ The Secretary denied the applications initially and again on reconsideration. Plaintiff then requested a hearing before an ALJ. That hearing took place on November 6, 1991. A summary of the evidence submitted at the hearing is set forth below.

Plaintiff testified that she previously worked as a production worker, a horse trainer, a receptionist, a photograph proof consultant, accounting clerk and as a "car jockey."⁴ She testified, however, that she was disabled because of a herniated disk, severe headaches and pain in her neck, left shoulder and arm. *Record at 42*. She also testified that her daily

² When deciding a claim for benefits under the Social Security Act, the Administrative Law Judge ("ALJ") must use the following five-step evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment precludes the claimant from doing his past relevant work; and (5) whether the impairment precludes the claimant from doing any work. 20 C.F.R. § 404.1520(b)-(f) (1991). Once the Secretary finds the claimant either disabled or nondisabled at any step, the review ends. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988). In the instant case, the Secretary found Plaintiff could return to her past relevant work.

³ Ms. Jason testified that her back problems were the result of a July 25, 1988 automobile accident. *Record at 42*.

⁴ Plaintiff worked for Doenges Brothers Ford where she shuttled cars back and forth between the service area and the parking lot.

activities are minimal and that she sleeps 12 to 14 hours a day.⁵

The medical evidence submitted to the ALJ was as follows. On March 12, 1990, a cervical myelogram revealed that she had "probable central disc herniation at C6-7 level with a left paracentral disc herniation at the C5-6 region." *Record at 156-158.*

On November 21, 1990, Dr. James A. Rogers, a treating physician, examined Plaintiff. He stated that Plaintiff's neck was "immobilized with pain" and that she still had a "weakness sensation and heaviness in her left arm." *Id. at 161.* However, on January 7, 1991, Dr. Rogers recommended that Plaintiff exercise and take Flexeril. He also noted that there was nothing more he could do for her. *Id. at 160.*

On February 7, 1991, Dr. James C. Mayoza -- another treating physician -- examined Plaintiff. He wrote:

I believe that she has significant injury to cervical spine, but that injury is not severe enough to necessitate surgery, even though she has pain, there is no promise that surgery would significantly improve her present condition...*Id. at 177.*

On May 23, 1991, Dr. Ashok Kache, a consulting physician, examined Plaintiff. Dr. Kache opined that Plaintiff "appeared to be in no acute distress." In addition, Dr. Kache stated: "In summary, this young female who has a history of a motor vehicle accident in 1988 with resultant residual deficits of neck and back pain, headaches, and left sided weakness demonstrates decreased range of motion and neurological findings...The patient appears to have considerable functional impairment in day-to-day activities due to these impairments." *Id. at 180.*

⁵ Plaintiff also testified that she can only stand for 30 to 45 minutes at a time and sit for no more than 45 minutes at a time. She testified that she cannot lift more than 15 pounds and can walk for only 30 to 45 minutes.

On September 24, 1991, Dr. William Dandridge, a consulting physician, examined Plaintiff. Dr. Dandridge completed a residual functional capacity evaluation that showed Plaintiff could perform some light work activity. *Id.* at 197-198.⁶

In addition to the medical evidence, the ALJ also heard testimony from the vocational expert. The vocational expert testified that Plaintiff could return to her past relevant work as a automobile car porter and receptionist.⁷ Following the hearing, the ALJ found that Plaintiff had the residual functional capacity to return to work as a receptionist. Plaintiff subsequently filed this appeal.

III. Legal Analysis

Plaintiff raises two issues.⁸ First, did the ALJ properly evaluate Plaintiff's complaints of pain? Second, does substantial evidence support the Secretary's finding that Plaintiff can work as a receptionist?

⁶ Dr. Dandridge concluded that Plaintiff could sit up to 30 minutes at one time, stand up to an hour and walk for up to 30 minutes at a time. He also found that Plaintiff could sit a total of six hours in an eight-hour work day. He also found that she could stand up to six hours in an eight-hour work day.

⁷ Plaintiff contends that the ALJ's hypothetical question was improper because it did not precisely state all of her impairments. The undersigned finds that argument to be without merit. The ALJ's question did not have to state every alleged impairment -- only those which he believed to be true. *Talley v. Sullivan*, 908 F.2d 585 (10th Cir. 1990). The ALJ did that, asking: "Let's assume that the ALJ were to find that the claimant is a 33 year old individual who has a 10th grade education but also has one and a half years of junior college, she would have a...fair to good ability to read, write and use numbers. Assume further that the ALJ were to find that claimant has in general the physical capacity to perform and I want you to consider light and consider sedentary work, however, let's assume...the following physical limitations. The claimant would be able to sit at any one time for up to 30 minutes, would be able to stand at one time for approximately an hour, would be able to walk at one time up to 30 minutes. During the entire eight hour day claimant would be able to sit for six hours, stand...for six hours and walk for, during an entire eight hour day for a total of six hours. The claimant would be able to lift up to 10 pounds occasionally and would be able to lift up to 20 pounds infrequently. The claimant would be able to carry up...to five pounds continuously, would be able to carry up to 10 pounds occasionally...The claimant would be able to crawl infrequently, the claimant would be able to bend, squat, climb or reach occasionally...claimant would have a total restriction of activities involving unprotected heights. Assume Dr. Young that the claimant would be afflicted with symptomatology primarily mild to moderate to occasional chronic pain of sufficient severity as to be noticeable to her at all times...Assume further that the claimant does take medication for relief of symptomatology, that with utilization of that medication and considering that along with her other symptomatology and other proposed restrictions, she would not be precluded from functioning at the level I've indicated. She would seem to be able to remain reasonably alert to perform functions in a work setting. Assuming all of the foregoing in this hypothetical, Dr. Young could the claimant return to any past relevant work either as she has described it or as that work is customarily performed?"

⁸ The "hypothetical question" issue is discussed in footnote 7.

The rule on evaluating complaints of pain is examined in *Luna v. Bowen*.⁹ The ALJ must first determine whether a claimant has established a pain-producing impairment by objective medical evidence. Second, he must decide whether there is a "loose nexus" between the impairment and a claimant's subjective allegations of pain. If those two prongs are met, the question becomes whether, considering all the subjective and objective evidence, a claimant's pain is in fact disabling. *Id.* at 163-164.

In the instant case, the ALJ found that Plaintiff established a pain-producing impairment. He also concluded that a loose nexus between the impairment and Plaintiff's subjective allegations of pain existed. The ALJ then, after examining the objective and subjective evidence, found that Plaintiff's pain was not disabling. *See, Record at 23* ("The medical etiology and claimant's life activities do not suggest that claimant is suffering from disabling pain.") Consequently, the ALJ properly followed the *Luna* analysis.¹⁰

The second issue is whether substantial evidence supports the ALJ's finding of no disability. As noted earlier, *substantial evidence* is what "a reasonable mind might deem adequate to support a conclusion." *Jordan, supra.*

The evidence of record supports the ALJ's decision. First, none of the doctors examining Plaintiff concluded that she could no longer work. One of her treating physician, Dr. Rogers, acknowledged that his 33-year-old patient had pain but recommended only exercise and medication as treatment. Dr. Mayoza, another treating

⁹ 834 F.2d 161 (10th Cir. 1987).

¹⁰ In *Luna*, the Tenth Circuit set forth the factors to determine a claimant's credibility regarding subjective complaints of pain as (1) a claimant's persistent attempts to find relief for his pain and his willingness to try any treatment prescribed; (2) regular use of crutches or a cane; (3) regular contact with a doctor; (4) possibility that psychological disorders combine with physical problems; (5) claimant's daily activities; and (6) dosage, effectiveness and side effects of medication. In this case, the ALJ discussed factor Nos. 2, 3, 5 and 6 in his opinion. Factor No. 4 does not apply and his review of the medical evidence adequately examined factor No. 1.

physician, stated that Plaintiff had "significant injury" to her spine, but not enough to necessitate surgery. Dr. Kache, a consulting physician, had a similar opinion. Dr. Dandridge, another consulting physician, found that Plaintiff could do light work. In addition to the medical evidence, the vocational expert testified that Plaintiff could return to work as a receptionist. Therefore, the medical evidence -- coupled with the vocational expert testimony -- constitutes substantial evidence that Plaintiff was not disabled.

IV. Conclusion

The Secretary found that Plaintiff could return to her past relevant work as a receptionist. Substantial evidence supports that decision. In addition, the ALJ properly evaluated Plaintiff's subjective complaints of pain as required by *Luna v. Bowen, supra*. Finally, the ALJ's hypothetical question was proper, given the circumstances of this case. As a result, the Court AFFIRMS the Secretary's decision.

SO ORDERED THIS 19th day of April, 1994.


JEFFREY S. WOLFE
UNITED STATES MAGISTRATE JUDGE

APR 20 1994 -
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 93-C-847-B

NINETY-EIGHT THOUSAND
FOUR HUNDRED SIXTY-FIVE
THOUSAND DOLLARS
(\$98,465.00) IN UNITED
STATES CURRENCY AND
FIVE THOUSAND THREE
HUNDRED TWENTY-FIVE
DOLLARS (\$5,325.00) IN
CASHIER'S CHECKS AND
MONEY ORDERS,
(TOTAL \$103,790.00),

and

SEVEN ITEMS OF ELECTRONIC
EQUIPMENT,

Defendants.

FILED

APR 20 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT OF FORFEITURE
BY DEFAULT AND BY STIPULATION**

This cause having come before this Court upon the plaintiff's Motion for Judgment of Forfeiture by Default and by Stipulation against the defendant funds and electronic equipment and all entities and/or persons interested in the defendant funds and/or electronic equipment, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 20th day of September 1993, alleging that the defendant funds and electronic equipment were subject to forfeiture pursuant to 21 U.S.C. § 881, because they were

furnished, or intended to be furnished, in exchange for a controlled substance, or were purchased with proceeds traceable to such an exchange, and/or because they were used to facilitate drug transactions, in violation of the drug laws of the United States.

The defendant currency described in the style and body of the Complaint for Forfeiture and subsequent documents as:

**NINETY-EIGHT THOUSAND
FOUR HUNDRED SIXTY-FIVE
THOUSAND DOLLARS
(\$98,465.00) IN UNITED
STATES CURRENCY AND
FIVE THOUSAND THREE
HUNDRED TWENTY-FIVE
DOLLARS (\$5,325.00) IN
CASHIER'S CHECKS AND
MONEY ORDERS,
(TOTAL \$103,790.00),**

contains a scrivener's error in the language, but not in the amount, and should actually read as follows:

**NINETY-EIGHT THOUSAND
FOUR HUNDRED SIXTY-FIVE
DOLLARS (\$98,465.00)
IN UNITED STATES CURRENCY
AND FIVE THOUSAND THREE
HUNDRED TWENTY-FIVE
DOLLARS (\$5,325.00) IN
CASHIER'S CHECKS AND
MONEY ORDERS,
(TOTAL \$103,790.00).**

Warrants of Arrest and Notices In Rem were issued on the 20th day of September 1993, by the Clerk of this Court to the United States Marshal for the Northern District of Oklahoma for

the seizure and arrest of the defendant electronic equipment and for publication in the Northern District of Oklahoma, and to the District of Nevada for the seizure and arrest of the defendant funds and for publication in the District of Nevada.

On the 27th day of October 1993, and the 30th day of November, 1993, the United States Marshals Service served a copy of the Complaint for Forfeiture In Rem, the Warrant of Arrest and Notice In Rem, and the Order on the defendant funds and electronic equipment, respectively.

James Hobart Van Over, who was determined to be the only potential claimant in this action with possible standing to file a claim to the defendant funds and electronic equipment, was served in this action by the United States Marshals Service on the 26th day of October 1993.

USMS 285s reflecting the service upon the defendant funds and electronic equipment and upon James Hobart Van Over are all on file herein. On March 29, 1994, James Hobart Van Over executed a Stipulation for Forfeiture of the defendant funds and electronic equipment. This Stipulation for Forfeiture was filed on March 30, 1994.

All persons or entities interested in the defendant funds and electronic equipment were required to file their claims herein within ten (10) days after service upon them of the Warrants of Arrest and Notices In Rem, publication of the Notices

of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

No other persons or entities upon whom service was effected more than thirty (30) days ago have filed a Claim, Answer, or other response or defense herein.

The United States Marshals Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending and in which the defendant electronic equipment was located, on March 10, 17, and 24, 1994, and in the Las Vegas Review Journal, a newspaper of general circulation in the District of Nevada, the district in which the defendant funds are located, on November 5, 12, and 19, 1993. Proof of Publication was filed April 7, 1994.

No other claims in respect to the defendant funds and electronic equipment have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant funds or electronic equipment, and the time for presenting claims and answers, or other pleadings, has expired; and, therefore, default exists as to the defendant funds and electronic equipment, and all persons and/or entities interested therein, except James Hobart Van Over, who

executed Stipulation for Forfeiture on March 29, 1994; filed March 30, 1994.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant funds and electronic equipment:

- 1) NINETY-EIGHT THOUSAND
FOUR HUNDRED SIXTY-FIVE
DOLLARS (\$98,465.00)
IN UNITED STATES CURRENCY
AND FIVE THOUSAND THREE
HUNDRED TWENTY-FIVE
DOLLARS (\$5,325.00) IN
CASHIER'S CHECKS AND
MONEY ORDERS,
(TOTAL \$103,790.00);

and

- 2) SEVEN ITEMS OF ELECTRONIC
EQUIPMENT, MORE PARTICULARLY
DESCRIBED AS FOLLOWS:

- a) TELECON
SECURITY
UNIT, MODEL
TSU 300,
SERIAL NO.
17933;

- b) TRIMBLE
FLIGHTMATE
GLOBAL
POSITIONING
SYSTEM, MODEL
17319, SERIAL
N O .
0010001LH5;

- c) OKI PORTABLE
TELEPHONE AND
POWER CORD,
SERIAL NO.
106MB0306268;

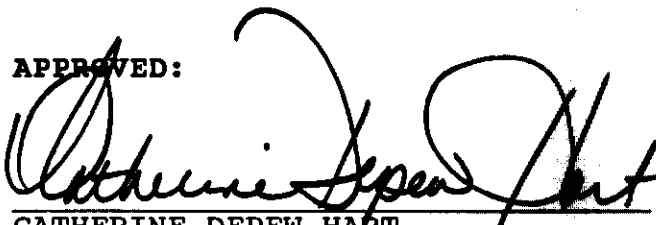
- d) TELEPHONE
SCRAMBLER;
MODEL ACS-2,
SERIAL NO.
010915 CODE
A;
- e) TELEPHONE
SCRAMBLER,
MODEL ACS-2,
SERIAL NO.
010929 CODE
A;
- f) R E G E N C Y
S C A N N E R ,
MODEL HX
2000; SERIAL
NO. 007274;
- g) MOTOROLA CEN-
TEL PORTABLE
TELEPHONE,
M O D E L
F09HLD8336AG,
SERIAL NO.
949GTA1913,

and that such funds and electronic equipment be, and they are,
forfeited to the United States of America for disposition
according to law.

S/ THOMAS R. BRETT

THOMAS R. BRETT, Chief Judge of the
United States District Court

APPROVED:


CATHERINE DEPEW HART
Assistant United States Attorney

N:\UDD\CHOOK\FC\VANOV12\03830

ENTERED ON DOCKET
DATE APR 20 1994

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

APR 20 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RONDA FLYNN,

Plaintiff,

v.

OTTAWA COUNTY BOARD OF
COUNTY COMMISSIONERS,
et al.,

Defendants.

Case No. 93-C-1139-B

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed March 24, 1994 in which the Magistrate Judge recommended that Mr. Hickman not be allowed to withdraw as counsel of record for Plaintiff Ms. Flynn, until new counsel has entered an appearance in the lawsuit prior to the next Case Management Hearing set May 24, 1994 at 10:30 a.m., and the Case Management Plan has been timely filed of record. If new counsel has entered the case prior to May 24, 1994 and a Case Management Plan has been timely filed, Mr. Hickman should be allowed to withdraw. Otherwise, MR. Hickman is to stay in the case through the next Case Management Hearing.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and

hereby is adopted and affirmed.

It is, therefore, Ordered that the recommendations of the Magistrate Judge are hereby adopted as set forth above.

SO ORDERED THIS 19 day of april, 1994.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED
APR 20 1994
DATE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WARD A. CHENEY, JR.; CATHY L.
CHENEY; COUNTY TREASURER, Tulsa
County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

FILED

APR 20 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-814-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 19 day
of April, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Ward A.
Cheney, Jr. and Cathy L. Cheney, appear by their attorney
Warren G. Morris.

The Court being fully advised and having examined the
court file finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on September 13, 1993; and that Defendant, Board of County

Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on September 13, 1993.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on October 20, 1993; that the Defendants, Ward A. Cheney, Jr. and Cathy L. Cheney, filed their Answer on September 30, 1993.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a mortgage securing said promissory note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Three (3), Block Five (5), RIVERSIDE WEST,
an Addition in Tulsa County, State of
Oklahoma.**

The Court further finds that on December 18, 1986, the Defendants, Ward A. Cheney, Jr. and Cathy L. Cheney, executed and delivered to the United States of America, acting through the Small Business Administration, their promissory note in the amount of \$86,900.00, payable in monthly installments, with interest thereon at the rate of four percent (4%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ward A. Cheney, Jr. and Cathy L. Cheney, executed and delivered to the United States of America, acting through the Small Business

Administration, a mortgage dated December 18, 1986, covering the above-described property. Said mortgage was recorded on December 18, 1986, in Book 4989, Page 1776, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, **Ward A. Cheney, Jr. and Cathy L. Cheney**, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Ward A. Cheney, Jr. and Cathy L. Cheney**, are indebted to the Plaintiff in the principal sum of \$84,142.56, plus accrued interest in the amount of \$12,069.97 as of July 22, 1993, plus interest accruing thereafter at the rate of 4 percent per annum or \$9.22 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$442.00, plus penalties and interest, for the year 1993. Said lien is superior to the interest of the Plaintiff, **United States of America**.

The Court further finds that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting through the Small Business Administration, have and recover judgment against the Defendants, **Ward A. Cheney, Jr. and Cathy L. Cheney**, in the principal sum of \$84,142.56, plus accrued interest in the amount of \$12,069.97 as of July 22, 1993, plus interest accruing thereafter at the rate of 4 percent per annum or \$9.22 per day until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$442.00, plus penalties and interest, for ad valorem taxes for the year 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, **Ward A. Cheney, Jr. and Cathy L. Cheney**, to satisfy the money judgment of the Plaintiff herein, an

Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$442.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants

and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



WARREN G. MORRIS, OBA #6431
1918 East 51st Street, Suite 1-E
Tulsa, Oklahoma 74105
(918) 627-4300
Attorney for Defendants,
Ward A. Cheney, Jr. and Cathy L. Cheney



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-814-B

KBA:css

ENTERED IN COURT
APR 20 1994
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOHN B. GRANT,

Plaintiff,

vs.

RON CHAMPION, et al.,

Defendants.

No. 93-C-397-B

FILED

APR 20 1994

Richard L. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

On March 3, 1994, the Court denied Defendant's motion to dismiss without prejudice and granted the Plaintiff fifteen days within which to submit his second amended complaint. The Plaintiff has failed to do so. Accordingly, the Court hereby **dismisses** this case without prejudice for failing to comply with the March 3, 1994 order [docket #24].

SO ORDERED THIS 19 day of Apr., 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

26

ENTERED ON DOCKET
DATE APR 20 1994
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 19 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

LORI LITTLE,

Plaintiff,

vs.

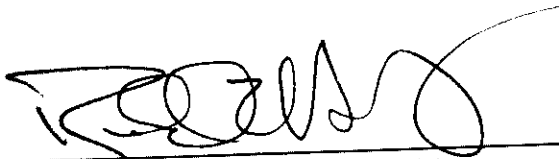
TOSHIBA INTERNATIONAL,

Defendant.

Case No. 92-C-1176-B

JOINT STIPULATION OF DISMISSAL

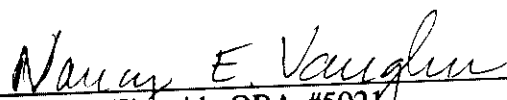
Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Plaintiff, Lori Little, and the Defendant, Toshiba International Corporation, jointly stipulate and agree that this action should be and is hereby **dismissed** with prejudice, each side to bear his or its own costs, attorneys' fees and expenses.



Ronald E. Hignight, OBA #10334

- Of the Firm -

McGivern, Scott, Gilliard, Curthoys & Robinson
1515 South Boulder
Tulsa, Oklahoma 74101-2619
918-584-3391
ATTORNEY FOR PLAINTIFF LORI LITTLE



James L. Kincaid, OBA #5021
Nancy E. Vaughn, OBA #9214

- Of the Firm -

CROWE & DUNLEVY
Suite 500, 321 South Boston
Tulsa, Oklahoma 74103-3313
918-592-9800

- and -

Roger J. Fleischmann, Esq.
FLEISCHMANN & FLEISCHMANN
650 California Street, Suite 2550
San Francisco, CA 94108-2606
415-981-0140

ATTORNEYS FOR DEFENDANT
TOSHIBA INTERNATIONAL CORPORATION

FILED

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

APR 18 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JERRY LEWIS MARBLE,

Plaintiff,

vs.

ELF-ATOCHEM NORTH AMERICA, INC.

Defendant.

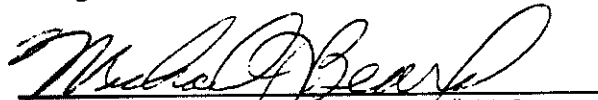
Case No. 93-C-528 B

APR 20 1994

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. Rule Civ. Pro. 41(a)(1)(ii), the parties in this cause stipulate, through the signatures of their respective counsel below, that Plaintiff Jerry Lewis Marble, hereby DISMISSES WITH PREJUDICE TO REFILING, his claims in this cause, and this action, and that the parties will pay their respective fees and costs.

Respectfully Submitted,



Michael J. Beard, OBA #626
Parks & Beard
1736 S. Carson
Tulsa, OK 74119-4698
(918) 587-7113

ATTORNEY FOR PLAINTIFF
JERRY LEWIS MARBLE



R. Casey Cooper, OBA #1897
R. Kevin Layton, OBA #11900
BOESCHE, McDERMOTT & ESKRIDGE
100 West 5th Street, Suite 800
Tulsa, Oklahoma 74103-4216
(918) 583-1777

ATTORNEYS FOR DEFENDANT
ELF ATOCHEM NORTH AMERICA, INC.

ENTERED ON DOCKET

DATE APR 20 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 20 1994

ROLANDA STRANGE, now
BECKMANN,
Plaintiff,

vs.

WINDWARD ENERGY & MARKETING
COMPANY, incorporated
the state of Oklahoma, and
MARK A. PERRY,
Defendants.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-582-B
(Tulsa County Case
No. CJ-93-02419)

JUDGMENT

This action came on for hearing before the Court, the Honorable Thomas R. Brett presiding, on Defendants' motion for summary judgment, and the issues having been heard,

Judgement is rendered in the above-captioned case as follows;

Based on the Court's findings and conclusions in its January 26, 1994, order granting partial summary judgment to Defendants, the Court finds that Defendants are entitled to judgment as a matter of law on Plaintiff's claim for contributions to Windward's profit sharing plan and ancillary issues.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Rolanda Beckmann take nothing by reason of her claim for contributions to Windward's profit sharing plan and related issues and that judgment be entered in favor of Defendants Windward Energy & Marketing Company and Mark A. Perry.

DATED: 4-19-94


UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE APR 19 1994

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BESSIE LAYTON, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF TOMMY LAYTON, DECEASED,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF MAYES AND
SHERIFF WILEY BACKWATER,

Defendants.

Case No. 92-C-66-B

AMENDED JUDGMENT

In keeping with the Order filed by the Court this date, Judgment is hereby amended and entered in favor of the Plaintiff, Bessie Layton, personal representative of the Estate of Tommy Layton, deceased, in the total sum of Fifty Thousand Dollars (\$50,000.00), against Defendants, Board of County Commissioners of Mayes County, Oklahoma, and Sheriff Wiley Backwater, in his official capacity, with interest thereon from January 24, 1992, to December 31, 1992, at the rate of 9.58% per annum, from January 1, 1993, through December 31, 1993, at the rate of 7.42% per annum, and from January 1, 1994, through January 5, 1994, at the rate of 6.99% per annum.

Further, interest at the rate of 3.61% per annum from January 5, 1994, is assessed on said total amount. The plaintiff is awarded costs of this action against said Defendants if timely applied for pursuant to Local Rule 54.1, as well as attorney's fees in the amount of \$64,616.92, as provided in the Order filed by the Court this date.

DATED THIS 15 DAY OF APRIL, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE APR 19 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CLARENDON NATIONAL INSURANCE
COMPANY and VAN-AMERICAN INSURANCE
COMPANY, INC.,

Plaintiffs,

vs.

INDUSTRIAL MANAGEMENT SERVICES,
INC.; GREEN ACRES ENTERPRISES, INC.;
LARRY W. POMMIER and KAY L. POMMIER

Defendants.

Case No. 93-C-1127-B

ORDER

Before the Court for decision is Plaintiffs' Motion for Summary Judgment (Docket # 6), pursuant to Rule 56 of the Federal Rules of Civil Procedure, against Defendants, Industrial Management Services, Inc. ("IMS"), Larry W. Pommier ("L. Pommier") and Kay L. Pommier ("K. Pommier"). Plaintiffs did not move for summary judgment against Defendant Green Acres Enterprises, Inc. ("Green Acres"). In the Amended Complaint, Plaintiffs, Clarendon National Insurance Company ("Clarendon") and Van-American Insurance Company, Inc. ("Van-American"), allege that Defendants breached the contractual obligations arising out of the purchase of a Coal Mining and Reclamation Surety Bond ("the Bond") from Plaintiffs.

Specifically, Plaintiffs' Amended Complaint includes allegations that Defendants 1) caused the forfeiture of the Bond to the Oklahoma Department of Mines ("ODOM") when they did not perform their reclamation obligations as required by the General Indemnity

20

Contract and by state statutes and regulations governing surface mining and the surface effects of underground mining; 2)did not pay the premiums required under the General Contract of Indemnity and the Guaranty; and 3)failed to abate the violations asserted under the Oklahoma Department of Mine's Cessation Orders, thereby resulting in permit revocation and notification and issuance of a bond forfeiture order, all facts which allegedly constitute events of default under both Defendants' mortgage with Green Acres and the written surety bond agreements with Plaintiffs.

Therefore, Plaintiffs seek judgment granting 1)damages in the amount of the Bond forfeited to the Oklahoma Department of Mines, which is Two Hundred Sixteen Thousand Six Hundred Dollars (\$216,600.00); 2)damages for the non-payment of premiums in the amount of Eleven Thousand Nine Hundred Thirteen Dollars (\$11,913.00) and pre/post judgment interest; 3)foreclosure and sale of property mortgaged for surety bond, while setting Plaintiffs' mortgage and lien prior and superior to all other claims; and 4)all costs of this action, including a reasonable attorney's fee.

Plaintiffs' Motion for Summary Judgment alleges the following specific facts with supporting exhibits, which, as of the date of this Order, have not been disputed by Defendants.

1) Plaintiff Clarendon is in the business of selling mining reclamation bonds. Acting as Clarendon's agent, Plaintiff Van-American administers and manages certain mining reclamation bonds issued by Plaintiff Clarendon. (See Plaintiffs' Amended Complaint, p. 1, para.'s 1-2).

2) On or about April 24, 1991, Defendants, (IMS, L. Pommier,

and K. Pommier), submitted an application to A)Plaintiffs for the issuance of surety bonds to IMS; and B)State of Oklahoma Department of Mines ("ODOM") in order to secure performance of Defendant IMS's coal mining reclamation obligations with respect to certain property in Wagoner County. (See Plaintiffs' Brief in Support of Motion for Summary Judgment ("Br-PMSJ"), p. 1, para. 1 and Polly Aff-Exh. 1, para. 3).

3) Subsequent to an IMS board resolution on April 24, 1991 (See Br-PMSJ Exh. 6) and in exchange for Plaintiffs' surety bond, Defendants IMS, K. Pommier, and L. Pommier executed and delivered to Plaintiffs four distinct and separate agreements, namely: A)Premium Agreement; B)General Contract of Indemnity ("Indemnity Contract"); C)Guaranty; and D)Collateral Trust Agreement. (See Br-PMSJ pp. 2-3, para.'s 2-5 and Exh.'s 2-5). (hereinafter collectively referred to as the "Agreements").

4) Allegedly pursuant to the terms of the Collateral Trust Agreement, Defendants secured a mortgage in the amount of Two Hundred Sixteen Thousand Six Hundred Dollars (\$216,600.00) from Defendant Green Acres on certain real property lying in the Northwest Quarter of Section 36, Township 21 North, Range 9 East, Osage County, Oklahoma. (See Plaintiffs' Amended Complaint, p. 4, para. 12 and Exh. 5).

5) In consideration of these Agreements and Defendants' mortgage, Plaintiffs caused the ODOM to issue to Defendant IMS Bond No. VAN-91-0032 on or about April 25, 1991.

6) In January, 1993, Plaintiffs allege that their field

agents discovered that Defendants were not performing their reclamation obligations as required under both the Agreements and state statutes and regulations. (See Br-PMSJ, p. 3, para. 8 and Polly Aff-Exh. 1, para. 4).

7) Subsequently, ODOM issued two cessation orders (93-28-01 TV1 on April 6, 1993 and 93-28-05 TV1 on August 16, 1993) on Permit No. 91/96-4218, which was the permit that Plaintiffs used to issue the Bond to the Defendants. Plaintiffs allege that Defendants have not abated or corrected either cessation order. (See Br-PMSJ, p. 3, para.'s 9-10, Exh's. 7-9, and Polly Aff-Exh. 1, para.'s 6 and 9).

8) Pursuant to the Indemnity Contract (Br-PMSJ Exh. 3, para 2(b)) and the Guaranty (Br-PMSJ Exh. 5, p. 2), Plaintiffs sent a written demand to Defendants, on June 18, 1993, requesting that Defendants: A) deposit \$216,600.00 with Plaintiffs; and B) pay the past-due premiums of \$11,913.00. (See Br-PMSJ, p. 3-4, para. 11-12, Polly Aff-Exh. 1, para. 7, and Exh's. 10-12).

9) Plaintiffs allege that Defendants IMS, L. Pommier, and K. Pommier have not paid the past-due premiums of \$11,913.00 nor deposited the \$216,600.00 demanded. (See Br-PMSJ, pp. 4-5, para.'s 13 and 22 and Polly Aff-Exh. 1, para.'s 8 and 10).

10) On September 15, 1993, ODOM held a show cause hearing concerning revocation of the permit issued to Defendant IMS and bonded by Plaintiffs. On November 3, 1993, ODOM's director adopted the September 30, 1993 hearing examiner's report and ordered the permit revoked. (See Br-PMSJ, pp. 4-5, para.'s 16-18 and Exh.'s 14

and 15).

11) ODOM then served Defendant IMS with a Notice of Bond Forfeiture on November 4, 1993, allegedly as a result of IMS's failure to perform its reclamation obligations. (See Br-PMSJ, p. 5, para. 19 and Exh. 16).

12) Pursuant to Defendant IMS's appeal of the Notice of Bond Forfeiture, ODOM held a hearing on January 19, 1994. On March 8, 1994, ODOM's director adopted the February 2, 1994 hearing officer's Proposed Order of Bond forfeiture, which concluded that no reclamation work had been performed on the permit site, and ordered the Bond in the amount of \$216,600.00 forfeited. (See Br-PMSJ, p. 5, para.'s 20-1, Exh. 17, Supplement to Statement of Facts in Plaintiffs' Brief in Support of Motion for Summary Judgment ("Supp-Br-PMSJ"), p. 1, para. 25, and Exh. 18).

13) As a consequence of the bond forfeiture order, on March 10, 1994, ODOM sent a written demand to Plaintiffs for the payment of \$216,600.00, the amount of the Bond. (See Supp-Br-PMSJ, p. 1, para. 26 and Exh. 19).

During the course of these bond forfeiture hearings, Plaintiffs filed a breach of contract action against Defendants on December 21, 1993. Plaintiffs later amended their Complaint on February 14, 1994 to clarify allegations and to change Count I from a Posting of Collateral to a Bond Forfeiture Breach of Contract Claim. Jurisdiction was based on diversity of citizenship. (See Amended Complaint, pp. 1-2, para.'s 1-6). Subsequently, on February 22, 1994, Plaintiffs filed a Motion for Summary Judgment

(Docket # 6) against Defendants IMS, L. Pommier, and K. Pommier only, none of whom have filed an answer, entered an appearance, or responded to Plaintiffs' motion for summary judgment.

Pursuant to Local Rule 7.1(C), response briefs shall be filed within fifteen (15) days after the filing of a Motion. The failure to respond to a Motion authorizes the Court, in its discretion, to deem the matter confessed, and enter the relief requested. In the instant case, Defendants IMS, L. Pommier, and K. Pommier have failed to file an answer, enter an appearance, and indeed, have not responded to Plaintiffs' Motion for Summary Judgment within the fifteen (15) days allowed. The Court concludes that these Defendants have waived any objection to the Plaintiffs' motion and the matters asserted therein are deemed confessed.

Furthermore, summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant

"must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the moving party can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .

"A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). Id at 1521."

In its motion for summary judgment, Plaintiffs assert that Defendants have violated and breached all of the agreements pertaining to the purchase of a Coal Mining and Reclamation Surety Bond. First, Plaintiffs allege that Defendants did not perform the

reclamation obligations, as required by the Indemnity Contract. The Indemnity Contract provides that a default shall exist when "Principal has not followed . . . the reclamation plan and schedule . . . or has failed to follow any regulation, law or statute, or order of the Agency relating to obtaining . . . a permit to mine." (See Br-PMSJ-Exh. 3, para. 3(c)(ii)).

Plaintiffs provide the following evidence in support of their claim of reclamation violations: 1)an affidavit from Plaintiff Van-American's Vice President and Chief Engineer, Ernest R. Polly, stating that field agents had discovered the violations (See Br-PMSJ-Exh. 1, p. 2, para. 5); and 2)ODOM's findings of fact and conclusions of law in their permit revocation and bond forfeiture determinations (See Br-PMSJ-Exh.'s 14-15, 17-18). Since Defendants have not responded, they have failed to present any affirmative evidence which might create a genuine issue of material fact. Therefore, the Court concludes that Defendants breached the Indemnity Contract by failing to perform reclamation obligations.

Furthermore, Plaintiffs allege that Defendants breached the Premium Agreement, Indemnity Contract, and the Guaranty when they failed to pay the premiums on the Bond and the \$216,000.00 deposit demanded by Plaintiffs. First, the Premium Agreement sets an annual premium of 2.75% on the face amount of the Bond. (See Br-PMSJ Exh. 2). In the Indemnity Contract, the Principal (i.e. the Defendants) promises to "pay all premiums for each such Bond". (See Br-PMSJ Exh. 3, para. 1). The Guaranty requires the Principal to indemnify Plaintiffs for "the payment of the bond premiums".

(See Br-PMSJ Exh. 5, para. 1). Second, the Indemnity Contract (Exh. 3, para. 2(b)) does, in fact, provide that:

"Principals promise to deposit with Surety on demand the amount of any reserve against such Loss which Surety is required, or deems it prudent to establish, whether on account of an actual liability or one which is, or may be, asserted against it, and whether or not any payment for such Loss has been made."

and the Guaranty (Exh. 5, p. 2) also states that:

". . . in the event Surety determines in its sole discretion that default is reasonably imminent, Surety has the right to demand the Undersigned to place funds or property in the possession or control of Surety sufficient to place Surety in position whereby Surety can prevent loss".

Plaintiffs' evidence consists solely of the Polly affidavit, which states that Defendants have failed to pay both the premiums and the deposit demand. (See Br-PMSJ Polly Aff-Exh. 1, para. 8 and 10 and Exh's. 10-12). Once again, since Defendants failed to respond, they have not presented any affirmative evidence to rebut Plaintiffs' claim. Therefore, the Court must conclude that Defendants breached their agreements with Plaintiffs.


Finally, as a result of Defendants' breach, Plaintiffs claim a right to be indemnified for court costs and attorney's fees. Indeed, the Indemnity Contract (See Br-PMSJ Exh. 3, para. 2), Guaranty (See Br-PMSJ Exh. 5, para. 1), and the Collateral Trust Agreement (See Br-PMSJ Exh. 4, para. 1) do provide that the Principal agrees to indemnify Plaintiffs for any loss or expense sustained as a result of furnishing or default of the bond or in enforcing the agreement, including court costs and attorney's fees.

Specifically, Defendants agreed to indemnify Plaintiffs against "all claims, suits, actions, debts, damages, costs, charges and expenses, including court cost and attorney's fees . . . and against any and all liability, losses and damages" sustained as a result of the bond issuance. Thus, the Court concludes that Plaintiffs are entitled to reasonable fees, if timely applied for pursuant to Local Rule 54.2.

For the reasons stated herein, the Court concludes that Plaintiffs are entitled to receive the following: 1) damages in the amount of the Bond forfeited to the Oklahoma Department of Mines, which is Two Hundred Sixteen Thousand Six Hundred Dollars (\$216,000.00); 2) damages for the non-payment of premiums in the amount of Eleven Thousand Nine Hundred Thirteen Dollars (\$11,913.00); 3) pre/post judgment interest; and 4) court costs and a reasonable attorney's fee.

The Court further concludes that Plaintiffs' Motion for Summary Judgment against Defendants Industrial Management Services, Larry Pommier, and Kay Pommier should be and is hereby GRANTED. Thus, the only remaining action is between Plaintiffs and Defendant Green Acres Enterprises, Inc., the mortgage company, concerning the issue of foreclosure and sale of a certain piece of real property lying in the Northwest Quarter of Section 36, Township 21 North, Range 9 East, Osage County, Oklahoma.

IT IS SO ORDERED THIS 15th DAY OF April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

STAMPED ON BOOKLET

DATE APR 19 1994

FILED

APR 19 1994
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LAYMON HARRIS,

Plaintiff,

vs.

STANLEY GLANTZ, et al.,

Defendants.

No. 94-C-344-B


ORDER

The Plaintiff has filed with the Court a civil rights complaint pursuant to 42 U.S.C. § 1983 and a summons and a U.S.M. 285 form for service on Defendant Larry McKray. The Court notes, though, (1) that Plaintiff has neither submitted a motion for leave to proceed in forma pauperis nor service papers for Defendant Stanley Glanz, and (2) that Plaintiff's complaint is identical to the complaint he submitted in Case No. 94-C-327-B.

ACCORDINGLY, IT IS HEREBY ORDERED:

- (1) That this action be **dismissed as duplicitous**; and
- (2) That the Clerk shall **transfer** to Case No. 94-C-327-B the extra copy of Plaintiff's complaint and the summons and U.S.M. 285 form for **service** on Defendant Larry McKray.

IT IS SO ORDERED this 19 day of apr., 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE

4-19-94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**FILED**

APR 19 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

MARGARET L. DARLAND,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN
SERVICES, Donna Shalala, Secretary,

Defendant.

92-C-0216-E ✓

ORDER

Now before the Court is Plaintiff Margaret Darland's appeal of the Secretary's denial of Social Security benefits. On appeal, Darland raises the following issues: (1) Did the ALJ err in his hypothetical questioning of the vocational expert? and (2) Did the ALJ improperly decline to reopen and consider Plaintiff's earlier applications? For the reasons discussed below, the Secretary's decision is affirmed.

I. Standard of Review

42 U.S.C. §405 (g) limits the scope of this court's review.¹ The reviewing court determines whether the ALJ's decision is supported by substantial evidence in the record as a whole. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Campbell v. Bowen*, 822 F.2d 1518, 1521 (10th Cir. 1987). "Substantial evidence" has been found to be "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229

¹42 U.S.C. § 405(g) states in part: "The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive"

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(1938); *Jordan v. Heckler*, 835 F.2d 1314, 1316 (10th Cir. 1987). This standard is less than a preponderance. *Laws v. Celebrezze*, 368 F.2d 640 (4th Cir. 1966).

The court must also determine whether the Secretary's decision conforms with applicable law. The decision may be reversed if the Secretary failed to apply the correct legal standard or failed to provide the Court with a sufficient basis to determine that appropriate legal principles have been followed. *Smith v. Heckler*, 707 F.2d 1284, 1285 (11th Cir. 1985).

Social Security disability cases are decided in a five step process.² Once the Secretary finds the claimant either disabled or nondisabled at any step, the review ends. *Gossett v. Bowen*, 862 F.2d 802, 805 (10th Cir. 1988).

II. Procedural History/Summary of Evidence

This is an appeal of the Plaintiff's third application for disability benefits. She first applied on August 17, 1988 and was denied benefits by the Secretary on January 17, 1989. She applied again on April 13, 1989 and was again denied on November 29, 1989. On April 25, 1990, she filed the application which is the focus of this appeal. Plaintiff alleges disability due to pain in her right hip and leg resulting from either multiple sclerosis or a stroke. Record at 93, 97.

The evidence is as follows. At the time of the hearing before the ALJ on April 24, 1991, Plaintiff was 48, had a 12th grade education, was 5'5" tall and weighed approximately 210 pounds. Her previous work experience included her work in a hospital

² The ALJ must use the following evaluation: (1) whether the claimant is currently working; (2) whether the claimant has a severe impairment; (3) whether the claimant's impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment precludes the claimant from doing his past relevant work; and (5) whether the impairment precludes the claimant from doing any work. 20 C.F.R. § 404.1520(b)-(f) (1991).

linen room and in the production line of Pepsi-Cola bottling. Id. at 38.

When Plaintiff was asked about her condition, she stated that it began at work one day when she kept tripping and falling because of her leg. Id. at 39. She also stated that she could only stand for a minute or two "without holding on to anything." Id. at 40. When asked about the pain she replied, "It's continual pain. It's shooting pain and everything else. It's in my hip and around my kneecap, my leg." Id.

Plaintiff further testified that she was being treated for "headaches, nervous system and stuff like that" with "nerve pills." Id. at 42. However, the ALJ found that the Plaintiff's allegations were neither credible nor supported by documentary medical evidence. Id. at 16.

At the hearing, testimony also was given by a vocational expert, Cheryl Mallon. In response to a hypothetical question posed by the ALJ, Mallon testified that Plaintiff could not return to her past relevant work, but could perform light or sedentary work.³ Id. at 53. However, when Mallon was questioned by the Plaintiff's attorney she acknowledged that it would be difficult for the Plaintiff to perform the duties of light or sedentary work. Id. at 54-55.

In addition to the foregoing testimony, several doctors submitted medical reports. An examination by Dr. Richard G. Cooper on November 10, 1988, found that Plaintiff

³ The ALJ asked Mallon, "Let's assume that we have a female individual who is 48 years old, has a 12th grade education, with the ability to read, write and use numbers; and assume further that this individual in general has the physical capacity to perform sedentary or light work; however, assume all -- that the Administrative Law Judge might also find the following physical limitations: in that this individual is suffering from obesity and is 5' 5" tall, weighs 210 pounds; and that this individual is afflicted with a symptomatology of chronic pain of sufficient severity as to be noticeable to her at all times, and the pain particularly being noticeable in the right hip and leg; and that claimant would be able to stand for a short period of time, and we'll say for this hypothetical for 30 minutes, before she will find it necessary to be seated, and that she could only walk short distances; and this individual is taking medication for relief of the symptomatology but the medication would not preclude her from functioning at the sedentary or light level, and that she would remain reasonably alert to perform functions presented by a work setting. Now assuming all or the foregoing, could this individual return to her past relevant work?" Record at 52.

"stands erect and walks with a very slight limp, but appears to be a stable gait." Id. at 270.

Her exam on June 12, 1989, by Dr. Dan E. Calhoun found "The gait is slowed ... and the patient does appear to have to pull the right leg along ... however, over short distances on our flat carpeted offices, [gait] appeared to be safe and stable and did not require the use of an assistive device. I do not have any doubts, however, that something such as a cane might help her" Id. at 275.

Dr. Michael Karathanos examined Plaintiff on October 17, 1990, and determined, "In the right lower extremity she has weakness with strength being approximately 3-4 over 5 in all muscle groups tested." However, Dr. Karathanos concluded that Plaintiff's gait was "stable and safe unassisted."

After reviewing the evidence, the ALJ found that Plaintiff did not meet or equal an impairment listed in Appendix 1. Id. at 18. He then found that Plaintiff could not return to her past relevant work. Id. at 19. However, based on the testimony and evidence of record, the ALJ concluded that Plaintiff could perform light or sedentary work as a mail clerk, library clerk, cashier or order clerk. Id. at 19-20.

III. Legal Analysis

The primary issue is whether there is substantial evidence to support the Secretary's findings. This issue includes the question of whether the ALJ erred in his hypothetical questioning.

As mentioned previously, substantial evidence is what "a reasonable mind might accept as adequate to support a conclusion." In this case, the doctors who examined Plaintiff acknowledged a weakness in her right hip and leg, however, none of them stated

that she could not work. Additionally, Plaintiff's claims of multiple sclerosis and a stroke were not established by medical evidence, nor was there documentation that Plaintiff was receiving ongoing care for her headaches. Furthermore, there is no record of her seeking treatment for nervousness since the filing of her current application.

Other evidence supporting the ALJ's findings came from the testimony of the vocational expert. Ms. Mallon testified that although Plaintiff could not return to her past work, she did have enough residual capacity to perform light or sedentary work. Plaintiff challenges this testimony on the basis that the ALJ's hypothetical question was flawed because it "erroneously asked the vocational expert to assume that the Plaintiff can engage in sedentary and light work." Plaintiff's brief, pg. 7, citing *Hargis v. Sullivan*, 945 F.2d 1482 (10th Cir. 1991) ("Testimony elicited by hypothetical questions that do not relate with precision all of a claimant's impairments cannot constitute substantial evidence to support the Secretary's decision.").

Upon review, the ALJ's hypothetical questioning was adequate. In his hypothetical question, the ALJ included all of the Plaintiff's impairments found to be supported by medical evidence.⁴ The hypothetical situation did include an assumption that Plaintiff could perform sedentary or light work, but the ALJ also included further limitations.⁵

Overall, the ALJ began with a hypothetical limited to sedentary or light work and then he added further limitations, which were in accord with his ultimate findings. In responding to this hypothetical the vocational expert testified that the Plaintiff could fill

⁴ It is not necessary for the ALJ to recite all of the record evidence to the vocational expert, only that he include those conditions found to exist by the ALJ. *Smith v. Sullivan*, 733 F.Supp. 450, 452 (D.D.C. 1990).

⁵ The hypothetical limited light or sedentary work by obesity, chronic pain in the right hip and leg, ability to stand for no more than 30 minutes at a time, ability to only walk short distances, and the taking of medication. Record at 52.

a position as a mail clerk, library clerk, cashier or order clerk.⁶

The medical evidence, along with the vocational expert's testimony, indicates that the ALJ's decision is supported by substantial evidence. While the Plaintiff argues that her testimony (judged non-credible by the ALJ) contradicts the ALJ's findings, this is not enough for this Court to make a finding of no substantial evidence.

The remaining issue is whether the ALJ improperly denied to reopen and consider Plaintiff's previous applications. Unless "colorable" constitutional issues are raised, the Social Security Administration's determinations on res judicata are not open. *Califano v. Sanders*, 430 U.S. 99 (1977).

Plaintiff contends that her right to due process was violated because the Denial Notices sent to her were misleading.⁷ Many courts have held that an applicant has a property interest in Social Security benefits thus, have due process rights related to the denial of those benefits. *Butland v. Bowen*, 673 F. Supp. 638, 641 (D. Mass. 1987). However, a determination of whether the notice sent to Plaintiff was misleading is not necessary.

This court has affirmed the ALJ's decision of no disability, and an independent review of the record did not reveal any medical evidence of different impairments prior to the protected filing date of the third application. Furthermore, the Plaintiff has not put

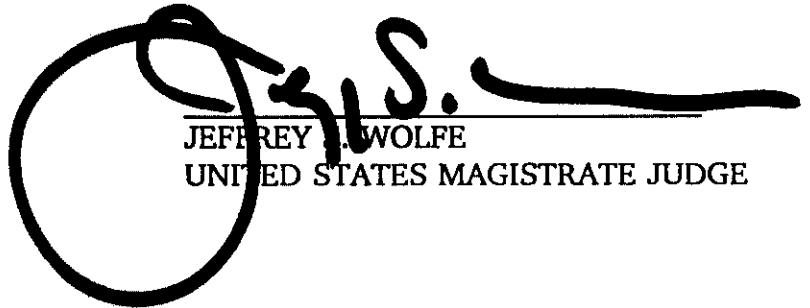
⁶ On cross-examination by the Plaintiff's attorney, the vocational expert testified that these positions would be difficult for someone with an unstable gait and chronic pain while in the sitting position. However, these additional limitations posed by the Plaintiff's attorney were not supported by medical evidence, nor were they impairments found to exist by the ALJ.

⁷ Plaintiff cited *Butland v. Bowen*, 673 F.Supp. 638 (D. Mass. 1987) in which the court found that the notice denying the plaintiff Social Security benefits was affirmatively misleading. The notice read in part: "If you do not request reconsideration of your case within the prescribed time period, you still have the right to file another application at any time." The court found that the notice did not reasonably apprise the plaintiff of the action and afford her an opportunity to object, and therefore it violated her constitutional right to due process.

forth any new evidence that would support a finding of disability prior to the third application.

Therefore, the Secretary's decision of no disability is affirmed.

SO ORDERED THIS 19th day of April, 1994.



JEFFREY J. WOLFE
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE

4-19-94

FILED

APR 19 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INDEMNITY UNDERWRITERS
INSURANCE COMPANY,

Plaintiff,

v.

UNITED STATES,

Defendant.

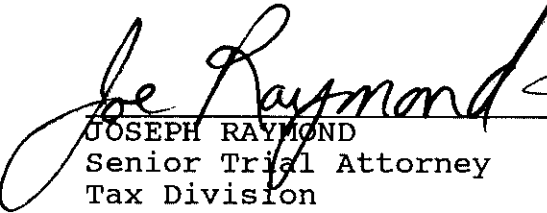
Case No. 93-C-0023-E

STIPULATION FOR DISMISSAL

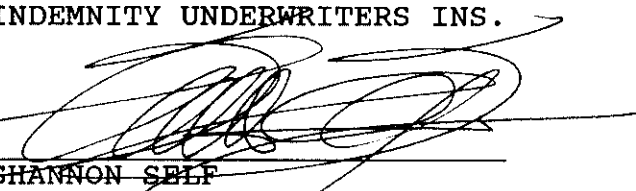
It is hereby stipulated and agreed that the above-referenced tax refund action of plaintiff Indemnity Underwriters Insurance Company against the United States of America be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

ATTORNEYS FOR THE UNITED STATES

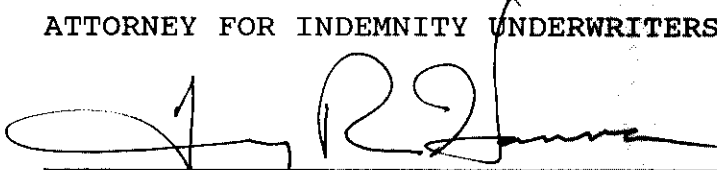
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(405) 235-7700

ENTERED ON DOCKET

DATE 4-19-94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEBBIE L. CHANEY,

Plaintiff,

-vs-

DONNA SHALALA,
United States Secretary of
Health and Human Services,

Defendant.

Case No. 94-C-20-E

APR 19 1994
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW Plaintiff Debbie L. Chaney, and, pursuant to Rule 41(a) of the Rules of Civil Procedure, 28 U.S.C.A., hereby dismisses the above-styled and numbered action in its entirety, without prejudice to refiling.

DEBBIE L. CHANEY, Plaintiff

By: 

Kort A. BeSore, O.B.A. #014674
Post Office Box 1346
10 E. 13th Street
Grove, Oklahoma 74344
(918) 786-6002

(VOLUNTARY DISMISSAL - SOLO PAGE)

RNB/tsr

ENTERED ON DOCKET

APR 19 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 19 1994

CLERK OF DISTRICT COURT

UGLY JOHNS CUSTOM BOATS, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

EXCESS INSURANCE COMPANY LTD.;
PHOENIX ASSURANCE P.L.C.; OCEAN
MARINE INSURANCE CO., LTD.;
SOVEREIGN MARINE AND GENERAL
INSURANCE CO., LTD.; MINSTER
INSURANCE CO., LTD.; PHOENIX
ASSURANCE P.L.C.; NORWICH UNION
FIRE INSURANCE SOCIETY, LTD.;
HANSA MARINE INSURANCE CO. (UK),
LTD.; VESTA (UK) INSURANCE CO.,
LTD.; PRUDENTIAL ASSURANCE CO.,
LTD.; CORNHILL INSURANCE P.L.C.;
and ALLIANZ INTERNATIONAL INSURANCE
CO., LTD.,

Defendants.

Case No. 93-C-868-B

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Ugly John's Custom Boats, Inc.,
and the Defendants, Excess Insurance Company Ltd.; Phoenix
Assurance P.L.C.; Ocean Marine Insurance Co., Ltd.; Sovereign
Marine and General Insurance Co., Ltd.; Minster Insurance Co.,
Ltd.; Phoenix Assurance P.l.C.; Norwich Union Fire Insurance
Society, Ltd.; Hansa Marine Insurance Co. (UK), Ltd.; Vesta (UK)
insurance Co., Ltd.; Prudential Assurance Co., Ltd.; Cornhill
Insurance P.L.C.; and Allianz International Insurance Co., Ltd.;
who severally subscribed to the insurance policies at issue in this

lawsuit, including Policy No. SD91/074, and any other companies who severally subscribed to the insurance policies at issue in this lawsuit, including Policy No. SD-91/074, and pursuant to Rule 41(a)(1)(ii), stipulate that this case is hereby dismissed with prejudice.

Respectfully submitted,

FRASIER & FRASIER

By: 

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Post Office Box 799
Tulsa, Oklahoma 74101
(918) 584-4724
ATTORNEYS FOR PLAINTIFF

SECREST, HILL & FOLLUO

By: 

JAMES K. SECREST, II OBA #8049
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7134 South Yale, Suite 900
Tulsa, Oklahoma 74136
Telephone: (918) 494-5905

and

WARREN M. FARIS
STONE, PIGMAN, WALTHER, WITTMANN
AND HUTCHINSON
546 Carondelet
New Orleans, LA 70130

ATTORNEYS FOR THE DEFENDANTS

ENTERED

DATE **APR 19 1994**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BESSIE LAYTON, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF TOMMY LAYTON, DECEASED,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF MAYES AND
SHERIFF WILEY BACKWATER,

Defendants.

Case No. 92-C-66-B

O R D E R

Before the Court for consideration are Defendants' Motion for Judgment as a Matter of Law or in the Alternative for a New Trial (Docket #70), Defendants' Motion to Alter or Amend Judgment (Docket #72), Plaintiff's Motion to Amend Judgment to Include Pre-Judgment Interest (Docket #69), and Plaintiff's Application for Attorney Fees and Expenses (Docket #68).

Plaintiff filed this civil rights action on January 24, 1992, alleging violations of the constitutional rights of her deceased son, Tommy Layton. Plaintiff's Complaint asserted that the Defendants denied Tommy Layton his 14th Amendment due process rights in violation of 42 U.S.C. § 1983.¹ This action stems from an incident in which the Mayes County Sheriff's Office used Tommy Layton as an informant on a drug buy, which resulted in the arrest of Dana O'Daniel. Five days after the drug buy and arrest, Tommy Layton was murdered in retaliation by friends of Dana O'Daniel. Plaintiff contended that Defendants were liable for Tommy Layton's

¹Plaintiff did not assert a pendent state law wrongful death or survival action.

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death for failing to properly train the sheriff's deputies in the proper method of handling drug informants.

On the morning of trial, the question arose by way of Defendants' Motion in Limine as to whether Oklahoma wrongful death damages are recoverable under § 1983. Plaintiff's counsel presented Berry v. City of Muskogee, 900 F.2d 1489 (10th Cir. 1990), to the Court as authority for recovery of both survival and wrongful death damages in a § 1983 action. After a cursory review of page 1505 of the Berry decision and after hearing argument from the parties, the Court denied Defendant's Motion in Limine, permitted Plaintiff to amend the style of the case to include Bessie Layton, as personal representative of the estate of Tommy Layton, deceased, and the Case proceeded to trial. At the conclusion of the trial, the jury was instructed on two theories of damage recovery: wrongful death damages and survival damages.

On January 5, 1994, the jury returned a verdict for Plaintiff in the aggregate amount of \$250,000. On the verdict form provided to the jury (Docket #65), the amount was broken down as follows: (1) \$50,000 was awarded to Bessie Layton, as personal representative, for funeral expenses and pain and suffering of Tommy Layton, deceased; (2) \$50,000 was awarded to Bessie Layton, as surviving mother of Tommy Layton, deceased; (3) \$75,000 was awarded to Joshua Lee Layton, as surviving child of Tommy Layton, deceased; and (4) \$75,000 was awarded to Rachel Lynn Layton, as surviving child of Tommy Layton, deceased. On January 5, 1994, the

Court entered Judgment (Docket #66) in favor of Plaintiff in accordance with the jury's verdict.

I. Defendants' Motion for Judgment as a Matter of Law or in the Alternative for a New Trial

A. Judgment as a Matter of Law

1. Standard of Review

Defendants' Motion for Judgment as a Matter of Law was denied at trial, and Defendant has now renewed this motion pursuant to Fed. R. Civ. P. 50(b).² Defendants' renewed Motion for Judgment as a Matter of Law is to be considered in accordance with the standard set forth in Fed. R. Civ. P. 50(a)(1), which provides:

[i]f during a trial by jury a party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law against that party. . . .

Such motions should be granted only where the evidence so conclusively favors one party that reasonable persons would be unable to arrive at a different result. Western Plains Serv. Corp. v. Ponderosa Dev. Corp., 769 F.2d 654 (10th Cir. 1985) (considering Motion for Judgment n.o.v.). Renewed motions for judgment as a matter of law "should be cautiously and sparingly granted," Lucas v. Dover Corp., 857 F.2d 1397 (10th Cir. 1988) (considering Motion for Judgment n.o.v.). In reviewing the evidence, the Court must draw all reasonable inferences in favor of the party opposing the motion and may only grant the motion when the evidence points one

²A renewed Motion for Judgment as a Matter of Law was previously referred to as a Motion for Judgment n.o.v.; however, this is a change in name only, as the standard remains the same.

way and is susceptible of no reasonable inferences which may sustain the opposing party's position. E.E.O.C. v. Prudential Federal Sav. & Loan Ass'n, 763 F.2d 1166 (10th Cir. 1985) (considering Motion for Judgment n.o.v.).

2. Municipal Liability for Failure to Train

The Defendants assert that the evidence was insufficient to support a jury verdict against the Defendants for failure to train. In City of Canton, Ohio v. Harris, 489 U.S. 378 (1989), the Supreme Court determined that in certain circumstances a municipality may be held liable under 42 U.S.C. § 1983 for constitutional violations resulting from its failure to train its employees. The first inquiry in a case alleging municipal liability under § 1983 is whether there is a direct causal link between a policy or custom of the municipality and the alleged constitutional deprivation. Id. at 385. In addition, "inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come in contact." Id. at 388. Only such a shortcoming can be properly thought of as a city 'policy or custom' that is actionable under § 1983. Id. at 389; see Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978).

The issue in such a case is whether the training was adequate, and if it was not, whether such inadequate training can be said to represent city policy. In City of Canton, the Court recognized that

[i]t may seem contrary to common sense to assert that a municipality will actually have a policy of not taking

reasonable steps to train its employees. But it might happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.

City of Canton, Ohio v. Harris, 489 U.S. at 390. The primary focus in determining the municipality's liability must be on the adequacy of the training program in relation to the tasks that must be performed. Id.

Drawing all reasonable inferences in favor of Plaintiff, the Court concludes the following evidence presented at trial supports the jury's verdict:

1. A stipulation disclosed that Sheriff Backwater was in charge of policymaking and training.
2. There was neither a police department policy concerning confidential informants used in drug interdiction, nor any training provided to those police officers who utilized confidential informants in drug interdiction.
3. Officer Pack, the officer placed in charge of drug interdiction for Mayes County, had no law enforcement training or experience other than three (3) months of on-the-job training.
4. Sheriff Backwater was informed that if Officer Pack did not change the manner in which he handled informants, "someone was going to get killed."
5. Officer Pack engaged in an improper search and collusion with Layton's girlfriend to intimidate Layton into becoming an

informant; furthermore, Sheriff Backwater was aware of and approved Layton's "recruitment" as an informant.

6. The buy/bust with Dana O'Daniel compromised Layton's role as an informant.

7. Plaintiff's expert witness Professor Chapman testified that this particular buy/bust compromised the safety and confidentiality of the informant.

8. Officer Pack's admission against interest that he mishandled the buy/bust due to inexperience and lack of training, and that he was basically at fault in causing Layton's death.

The jury concluded that the county's failure to train did amount to deliberate indifference, and that this policy was causally connected to Layton's death. Based on the above-stated evidence, it was reasonable for the jury to have determined that in light of the duties assigned to Officer Pack (i.e. drug interdiction), the need for more or different training was apparent. Sufficient evidence was also presented to allow the jury to conclude that this failure to train was so likely to result in injury to confidential informants, that the policymakers of Mayes County can reasonably be said to have been deliberately indifferent to the need. In addition, the jury could also have inferred from the evidence that Mayes County's failure to train was causally connected to Layton's death. Even though Layton was murdered by third parties who were not agents of Mayes County, the jury could reasonably have deduced that the county's policy was the moving force in bringing about the

constitutional violation. See Berry v. City of Muskogee, 900 F.2d 1489, 1499 (10th Cir. 1990) (quoting City of Springfield v. Kibbe, 480 U.S. 257, 268 (1987) (O'Connor, J., dissenting)). While Plaintiff had a heavy burden to satisfy in this case, the Court concludes that the jury's verdict was reasonably supported by the evidence.

Defendant also asserts that only persons affirmatively restrained by the government through incarceration, institutionalization, or other similar restraints are protected by substantive due process. In DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189 (1989), the Supreme Court held that there is no constitutional duty on the part of a state agency to protect a child from his father after receiving reports of possible abuse. The Court stated

[w]hile the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual's safety by having once offered him shelter. Under these circumstances, the State had no constitutional duty to protect Joshua.

Id. at 201 (emphasis added). DeShaney can be distinguished from the present case, since the evidence suggested Mayes County did play a part in the creation of the danger to Tommy Layton. Mayes County's deliberate indifference in failing to train its police officers led to Officer Pack's improper recruitment of Layton and placed Layton in great danger, a danger which resulted in his

death. Because Defendants' policy created the danger to Layton, they can be held responsible for the resulting violation of his constitutional rights.

For the reasons set forth, Defendant's Renewed Motion for Judgment as a Matter of Law is hereby DENIED.

B. New Trial

1. Weight of Evidence

For the same reasons that Defendant's Renewed Motion for Judgment as a Matter of Law was denied, Defendant's Motion for a New Trial based upon insufficient evidence is also DENIED.

2. Improper Evidence

Defendants' assert that the Court erred in admitting autopsy photographs of Layton. The evidence was admitted at trial over Defendants' objection that the photographs were prejudicial. The Court possesses considerable discretion in making evidentiary rulings and will not disturb a ruling on a motion for a new trial unless there is manifest injustice to the parties. See Green Constr. Co. v. Kansas Power and Light Co., 1 F.3d 1005, 1013 (10th Cir. 1993). Finding no such manifest injustice in the admission of the autopsy photographs, Defendants' Motion for a New Trial based on an improper evidentiary ruling is DENIED.

3. Improper Jury Instruction

Defendant also asserts that the jury was improperly instructed, and as a result a new trial should be awarded. While the Court concludes that the jury instructions were clearly erroneous under the standard set forth in Berry v. City of

Muskogee, 900 F.2d 1489 (10th Cir. 1990), a new trial is not necessary.³ Defendant's Motion for a New Trial based on improper jury instructions is hereby DENIED.

II. Defendants' Motion to Alter or Amend Judgment

In the alternative, Defendants request that the Court amend the judgment that was entered January 5, 1994. Defendants filed a Motion to Alter or Amend Judgment within ten days of the judgment's entry as required by Fed. R. Civ. P. 59(e). The Rule itself provides no standard for the granting of such a motion, but courts "have recognized three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993).

A. Wrongful Death Damages

In Berry v. City of Muskogee, 900 F.2d 1489, 1506 (10th Cir. 1990), the Tenth Circuit Court of Appeals concluded "that the federal courts must fashion a federal remedy to be applied to § 1983 death cases." Under the new federal remedy, appropriate compensatory damages include: (1) medical and burial expenses; (2) pain and suffering before death; (3) loss of earnings based upon the probable duration of the victim's life had the injury not occurred; (4) the victim's loss of consortium; and (5) other damages recognized in common law tort actions. Id. at 1507.

³For a more complete discussion of why the instructions were erroneous and the corrective measures being taken by the court, see supra section IIA.

In other words, Berry permits only a survival action in a death case for the victim's specific damages under § 1983, which must be brought by the estate of the deceased victim. However, the "federal remedy" damages permitted by Berry are a hybrid of traditional survival and wrongful death damages. In addition, Berry specifically recognizes that the derivative claims of the victim's family members can be pursued through a pendent wrongful death claim. Berry, 900 F.2d at 1507.

Defendants assert that the jury was improperly instructed on Oklahoma wrongful death damages, which are not recoverable in a § 1983 action, according to Berry. Consequently, Defendants contend that the judgment should be amended to disallow any damages which were awarded under an improper wrongful death theory.

The jury was instructed on both wrongful death and survival theories of recovery.⁴ First, the jury was instructed on wrongful

⁴The Court's instruction to the jury on damages provided:

PLAINTIFFS SEEK DAMAGES ON TWO THEORIES OF RECOVERY:

1. DAMAGES FOR THE ALLEGED WRONGFUL DEATH OF TOMMY LAYTON WHICH, IF RECOVERED, WOULD ACCRUE TO HIS MOTHER, BESSIE LAYTON, AND HIS CHILDREN, JOSHUA LAYTON AND RACHEL LAYTON. IF YOU FIND IN FAVOR OF THESE PLAINTIFFS AND AGAINST THE DEFENDANTS YOU MAY, IN DETERMINING THE AMOUNT OF DAMAGES PLAINTIFFS ARE ENTITLED TO RECOVER, CONSIDER THE FOLLOWING ITEMS:

A. THE LOSS OF FINANCIAL SUPPORT OF CONTRIBUTIONS OF MONEY TO THE MOTHER AND CHILDREN DURING THEIR MINORITY AND THE LOSS OF THE VALUE OF HOUSEHOLD SERVICES TO THE MOTHER THAT WOULD HAVE BEEN FORTHCOMING FROM TOMMY LAYTON.

B. THE GRIEF AND LOSS OF COMPANIONSHIP SUFFERED BY TOMMY LAYTON'S MOTHER, BESSIE LAYTON.

C. THE GRIEF AND LOSS OF COMPANIONSHIP SUFFERED BY TOMMY LAYTON'S CHILDREN.

D. THE PARENTAL CARE, TRAINING, GUIDANCE, OR EDUCATION THAT WOULD HAVE BEEN FORTHCOMING FROM TOMMY LAYTON TO HIS CHILDREN.

death damages recoverable by Layton's mother and children. If the jury found in favor of the Plaintiffs, these damages were to include the loss of financial support from the victim, the loss of the value of household services from the victim, the grief and loss of companionship suffered by the mother and children, and the parental care, training, guidance, or education that would have been forthcoming from the victim.

As set forth in Berry, these damages are not permitted in a § 1983 death case, but instead are damages allowed under an Oklahoma wrongful death claim. Since no pendent state wrongful death claim was brought by Plaintiff, it was a clear error of law to instruct the jury on these damages. Since the jury's verdict form delineates the exact amount awarded for these improper damages, a new trial is not necessary. Instead, Defendants' Motion to Amend Judgment is GRANTED. The Court amends the Judgment entered on January 5, 1994, by striking the damages awarded to (1) Bessie Layton, as surviving mother of Tommy Lee Layton, Deceased, in the amount of \$50,000, (2) Joshua Lee Layton, surviving minor son of Tommy Lee Layton, Deceased, in the amount of \$75,000, and

2. DAMAGES FOR THE DEATH OF TOMMY LAYTON WHICH WOULD ACCRUE TO HIS ESTATE, AS ADMINISTERED BY HIS PERSONAL REPRESENTATIVE, BESSIE LAYTON. IF YOU FIND IN FAVOR OF THIS PLAINTIFF AND AGAINST THE DEFENDANTS YOU MAY IN DETERMINING THE AMOUNT OF DAMAGES PLAINTIFF IS ENTITLED TO RECOVER, CONSIDER THE FOLLOWING ITEMS:

- A. THE PAIN AND SUFFERING BEFORE TOMMY LAYTON'S DEATH.
- B. BURIAL EXPENSES, IF PAID FOR BY THE ESTATE.

IN ANY EVENT THE TOTAL DAMAGES MAY NOT EXCEED THE SUM SUED FOR, \$1,000,000. IN ALL CASES DAMAGES MUST BE REASONABLE AND MUST BE SUPPORTED BY THE EVIDENCE.

(3) Rachel Lynn Layton, surviving minor daughter of Tommy Lee Layton, Deceased, in the amount of \$75,000.

The jury was also instructed on survival damages payable to the estate of the victim. Under this instruction, the Plaintiff was entitled to recover the pain and suffering of the victim before his death and burial expenses, if paid for by the estate. This instruction provides for two of the appropriate compensatory damages allowed under Berry. Therefore, this instruction was proper, and the remaining \$50,000 award will not be disturbed.

However, the question remains whether this instruction, when taken as a whole, was adequate to protect the interests of the Plaintiff, since the jury was not instructed on the remaining items of the federal remedy under Berry (i.e. loss of earnings based upon the probable duration of the victim's life had the injury not occurred and the victim's loss of consortium). While loss of earnings are permissible damages under the federal remedy, the evidence in this case did not support a loss of income in the future by the victim.⁵ Likewise, there was no loss of consortium because the victim was not married at the time of his death. Therefore, the Court determines that the survival damages instruction was proper under Berry.

⁵The evidence presented indicated Tommy Layton was not earning enough money to support himself, and there was no evidence to support an inference that this situation would have changed in the future.

B. Burial Expenses

Defendants also argue for an amended judgment with respect to the recovery of burial expenses, on the grounds the evidence suggests that these expenses may not have been paid by the victim's estate. At trial, Bessie Layton testified on direct examination as follows:

Q: Ms. Bessie, did you have to spend money for the funeral and grave marker for Tommy?

A: Well --

Q: Did you incur a bill for that?

A: I had to at first, but then Raspberry's folks, I think, paid some of -- Raspberrys. We had bought the tombstone and --

No other evidence was presented at trial suggesting that the burial expenses were paid by anyone other than the victim's estate. This testimony is insufficient in itself to establish as a matter of law that the expenses were not paid by the victim's estate. Further, a lump sum of \$50,000 was awarded to the victim's estate for survival damages. Since the jury was instructed to include burial expenses only if paid by the estate, the Court would be forced to speculate as to whether the jury included burial expenses in the \$50,000 award. For these reasons, Defendants' Motion to Amend with regard to burial expenses is DENIED.

III. Plaintiff's Motion to Alter or Amend Judgment to Include Pre-Judgment Interest

Plaintiff requests that the Court adopt Okla. Stat. tit. 12, § 727, which mandates pre-judgment interest in personal injury actions and amend the judgment accordingly. Pre-judgment interest

is appropriate in § 1983 actions only when such an award is needed to compensate the plaintiff fully or make the plaintiff whole. Furtado v. Bishop, 604 F.2d 80, 97 (1st Cir. 1979) and Ingram v. Cox Communications, Inc., 611 F. Supp. 150 (N.D. Ga. 1985). The decision whether to award prejudgment interest is committed to the fact finder's discretion. Heritage Homes of Attleboro v. Seekonk Water District, 648 F.2d 761, 764 (1st Cir. 1981) and Parson v. Kaiser Aluminum & Chemical Corporation, 727 F.2d 473 (5th Cir. 1984). The Court concludes an award of pre-judgment interest in the instant case is necessary to fully compensate the Plaintiff and would more fully effectuate the deterrent effect of §1983. Thus, based on the facts of this case, the Court adopts Oklahoma's pre-judgment interest law and awards prejudgment interest in accordance therewith. Plaintiff's Motion to Amend Judgment to Include Pre-Judgment Interest is hereby GRANTED.

IV. Plaintiff's Application for Attorneys' Fees and Expenses

Pursuant to the Attorney's Fee Award Act of 1976, 42 U.S.C. § 1988, Plaintiff has requested an award of reasonable attorneys' fees and costs of preparation as follows:

Attorney Summerlin	21.3 hours X \$100/hr	=	\$2,130.00
Attorney Gordon	346.15 hours X \$175/hr	=	\$60,576.25
Out-of-Pocket Expenditures		=	\$19,758.19
TOTAL			\$82,464.44

Defendant objects to (1) the recovery of out-of-pocket expenses for the fees of expert witnesses and a copy of a criminal transcript, (2) recovery of full fees when Plaintiff achieved only partial success, (3) recovery of fees for travel time and time necessary to become acquainted with the case.

A. Out-of-Pocket Expenditures

1. Fees for the Services of Experts

In West Virginia University Hospitals, Inc. v. Casey, 499 U.S. 83 (1991), the Supreme Court held that expenses for services rendered by experts are not recoverable under 42 U.S.C. § 1988. Such expenses are limited to the amount provided by 42 U.S.C. § 1920, which includes fees for witnesses in an award of costs, as limited by 42 U.S.C. § 1821 to \$30 per day for each day of attendance by each witness. Plaintiff requests \$19,758.19 for out-of-pocket expenditures. Of this amount, \$9,095.46 derives from fees for the services of experts. Therefore, the Court reduces Plaintiff's out-of-pocket expenditures to \$10,662.67.

2. Fees for a Transcript of a Criminal Proceeding

Plaintiff's counsel includes \$780 as out-of-pocket expenditures for the preliminary hearing transcript from the Mayes County Court Reporter for the case State v. Winch and Raspberry. Defendant asserts that such cost is not allowable under § 1988, since such costs are normally attributed to attorney's overhead. The Court disagrees. The subject transcript expense was reasonable, necessary, and not the type ordinarily absorbed as overhead. For this reason, Defendants' objection to this item of out-of-pocket expense is DENIED.

B. Partial Success of the Party Seeking Attorney's Fees

In Hensley v. Eckerhart, 461 U.S. 424, 434-436 (1983), the Supreme Court determined that when a plaintiff achieves excellent results, all fees should be recovered, even if he has not prevailed

on every contention; on the other hand, if the plaintiff has achieved only limited success, awarding a fee that compensates him for all hours expended may be excessive, even if his claims were interrelated. In the present case, Plaintiff prevailed on the only cause of action asserted, a § 1983 claim. However, Plaintiff succeeded only as to survival damages with wrongful death damages being disallowed in this Order. Defendant contends that because of this less than total success, the amount of attorney's fees should be apportioned. With this contention, the Court agrees.

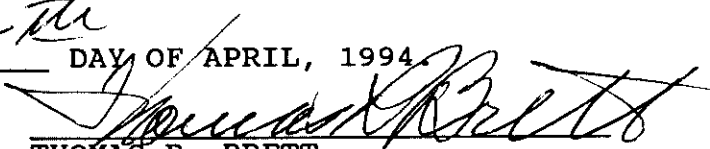
Attorney Gordon seeks compensation for 346.15 hours of work. This amount shall be reduced by fifty hours for a total of 296.15 hours of allowable time. The Court also concludes that fees of \$175/hour for Attorney Gordon and \$100/hour for Attorney Summerlin are reasonable fees for this legal community. Due to the complexity and novelty of the case, and the contingency for recovery, the Court also concludes that the time expended by Attorneys Gordon and Summerlin was reasonable (less the 50 hours deducted by the Court), including time spent for travel and becoming familiar with the case. Therefore, Plaintiff is awarded (1) \$10,662.67 for out-of-pocket expenditures, (2) \$2,130.00 for the time of Attorney Summerlin, and (3) \$51,826.25 for the time of Attorney Gordon, for a total attorney's fees award of \$64,618.92.

V. Conclusion

The Court concludes, for reasons set forth herein, that: Defendants' Motion for Judgment as a Matter of Law or in the alternative for a New Trial is DENIED; Defendants' Motion to Alter

or Amendment the Judgment is GRANTED IN PART and DENIED IN PART--
granted with respect to wrongful death damages improperly before
the jury, and denied with respect to a reduction for burial
expenses; Plaintiff's Motion to Amend Judgment to Include Pre-
Judgment Interest is DENIED; and Plaintiff's Application for
Attorney's Fees is GRANTED as modified herein for the amount of
\$64,618.92.

IT IS SO ORDERED THIS 15TH DAY OF APRIL, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED

DATE APR 19 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC., et al.,)
)
Defendants.)
)
AND CONSOLIDATED ACTIONS.)
)

Case No. 89-C-868-B
89-C-869-B
89-C-859-B

**ORDER GRANTING MOTION FOR GOOD FAITH
DETERMINATION AND ENTRY OF CONTRIBUTION
BAR ON ARCO/UNITED STATES SETTLEMENT**

The Court, upon consideration of the Motion for Good Faith Determination and Entry of Contribution Bar on Arco/United States Settlement, and Memorandum in Support, having examined the files and records of the proceedings herein, having reviewed and considered the terms and conditions of the settlement in question, and being fully advised and informed in the premises, does hereby DETERMINE, ORDER and DECREE as follows:

1. The settlement between ARCO and defendant United States, as set out in the Consent Order Regarding Claims Asserted by ARCO Against the United States, etc. (Docket #1097, October 13, 1993) ("Consent Order") is found to be in good faith, reasonable, fair and consistent with the purposes that CERCLA is intended to serve.

2. ARCO's recovery against any other party for response costs at the Glenn Wynn Site as defined in Paragraph No. 1 of the

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Consent Order is reduced by \$584,080.19¹ pursuant to the *pro tanto* credit rule, as adopted by this Court's prior Order of August 3, 1993 (Docket # 913).

3. ARCO's recovery against any other party for response costs at the Sand Springs Petrochemical Complex Superfund Site, exclusive of those incurred in connection with the Glenn Wynn Site, is reduced by \$175,000.00 pursuant to the *pro tanto* credit rule, as adopted by this Court's prior Order of August 3, 1993 (Docket Entry #913).

4. Each and every claim, counterclaim and cross-claim (including the "deemed filed" claims) by ARCO or any other party against defendant United States, or by the defendant United States against ARCO or any other party, is hereby dismissed, such claims to be dismissed in their entirety on the merits, with prejudice and without costs, except as set forth in ¶¶ 3, 4 and 9.d. of the Consent Order.

5. ARCO and defendant United States shall each bear and be responsible for its own expenses, attorneys' fees and legal costs incurred herein.


6. All contribution claims against defendant United States for costs incurred by any other party in performing the actions set

¹This amount was already subtracted from ARCO's recoverable costs at trial and thus is fully reflected in the Court's Amended Judgment of February 18, 1994. Therefore, this Order does not change the amount of ARCO's overage as set forth in the Amended Judgment.

forth in the September, 1987 ROD, for the Source Control Operable Unit ("ROD I"), and the June, 1988 ROD, for the Main Site Operable Unit ("ROD II"); or for any other costs incurred before the effective date of the Consent Order under the contribution and indemnity provisions of Oklahoma law, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA") or any other state and federal laws (including, but not limited to, any and all claims for recovery of response costs based upon theories of contract, negligence or any other theory), are barred.

7. Pursuant to Fed.R.Civ.P. 54(b), the Court expressly directs the entry of a partial final judgment dismissing, with prejudice, all claims against the defendant United States, and expressly determines that there is no just reason for delay. The partial final judgment hereby granted shall be entered by the Clerk, pursuant to Fed.R.Civ.P. 58 and 79(a), forthwith.

IT IS SO ORDERED, this 14th day of April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE APR 19 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

ROBERT E. COTNER
Petitioner,
vs.
MICHAEL CODY, et al
Respondent.

No. 94-C-323-B

APR 14 1994
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER REQUIRING RESPONDENT TO SHOW CAUSE

Petitioner has filed with the Court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Respondent is directed to prepare his response pursuant to Rule 5 of the Rules Governing §2254 Habeas Corpus Cases. That rule states:

The answer shall respond to the allegations of the petition. In addition it shall state whether the petitioner has exhausted his state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the state and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceeding. The answer shall indicate what transcripts . . . are available, when they can be furnished, and also what proceedings have been recorded and not transcribed. There shall be attached to the answer such portions of the transcript as the answering party deems relevant. The court on its own motion or upon request of the petitioner may order that further portions of the existing transcripts be furnished or that certain portions of the non-transcribed proceedings be transcribed and furnished. If a transcript is neither available nor procurable, a narrative summary of the evidence may be submitted. If the petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, a copy of the petitioner's brief on appeal and of the opinion of the appellate court, if any, shall also be filed by the respondent with the answer.

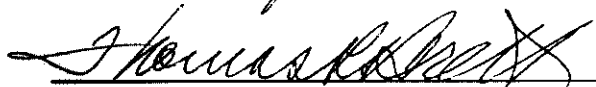
As an alternative to filing a Rule 5 answer, Respondent may file a motion to dismiss based upon alleged nonexhaustion, abuse of

the writ pursuant to Rule 9 of the Rules Governing § 2254 Habeas Corpus Cases, or lack of jurisdiction. If Respondent files a motion to dismiss based upon alleged nonexhaustion, and if Petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, a copy of Petitioner's brief on appeal and of the opinion of the appellate court, if any, should be filed by Respondent with the motion to dismiss.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) The Clerk shall **serve** by mail a stamped-filed copy of the petition on the Oklahoma Attorney General. See Local Rule 9.3(B).
- (2) Respondent shall **show cause** why the writ should not issue and **file** a response to the petition for a writ of habeas corpus within thirty (30) days from the date of entry of this order. Extensions of time will be granted for good cause only and in no event for longer than an additional twenty (20) days. Fed. R. Civ. P. 81(a)(2).

SO ORDERED THIS 14 day of April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE

4-18-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GREGORY DALE ENGLISH,

Petitioner,

vs.

MICHEAL CODY,

Respondent.

No. 93-C-553-E ✓

FILED

Richard M. Long, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is now before the Court for a decision. Respondent has filed a Rule 5 response. The Court determines that an evidentiary hearing is not necessary as the issues can be resolved on the basis of the record. See Townsend v. Sain, 372 U.S. 293, 318 (1963), overruled in part by Keeney v. Tamayo-Reyes, 112 S. Ct. 1715 (1992).

I. BACKGROUND

On September 7, 1977, Petitioner (a juvenile certified to stand trial as an adult) pleaded guilty to four cases of robbery with a firearm and one case of attempted robbery with a firearm in the District Court of Tulsa County, State of Oklahoma, in Case Nos. CRF-77-1434, CRF-77-1435, CRF-77-1436, CRF-77-1437, and CRF-77-1438. The trial court sentenced Petitioner to an indeterminate sentence in each case of twelve years to thirty-six years. Although the trial court advised Petitioner of his right to a direct appeal, Petitioner did not seek to withdraw his guilty plea

or otherwise attempt to appeal his conviction within the applicable time periods.

In January 1991, Petitioner filed an application for post-conviction relief in the District Court of Tulsa County, alleging that the statute under which he was certified to stand trial as an adult had been ruled unconstitutional. The district court denied relief and the Oklahoma Court of Criminal Appeals affirmed.

Next Petitioner filed a petition for a writ of habeas corpus which the court construed as a second application for post-conviction relief. Petitioner argued that neither he nor his father had been timely notified of the certification proceedings in accordance with Oklahoma precedent, and that his counsel at the certification proceedings and at trial provided ineffective assistance. The District court denied Petitioner's application on the basis of a procedural bar. The Court of Criminal Appeals affirmed, finding that Petitioner had waived the issues he had raised for the first time in his second application. In particular, the Court noted that Petitioner "has not proved that his confinement is unlawful or that his reasons are sufficient for failing to previously raise the issues he now raises."

In June 1993, the Petitioner filed the present application for a writ of habeas corpus, restating that his counsel in his juvenile court proceedings and plea of guilty proceedings provided ineffective assistance. [Docket #1 at 6.] The Respondent has objected to Petitioner's application on the basis of a procedural bar. The Petitioner has not submitted a reply.

II. DISCUSSION

The doctrine of procedural default prohibits a federal court from considering a specific habeas claim where the state's highest court declined to reach the merits of that claim on state procedural grounds, unless a petitioner "demonstrate[s] cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate[s] that failure to consider the claim[] will result in a fundamental miscarriage of justice." Coleman v. Thompson, 111 S. Ct. 2546, 2565 (1991); see also Gilbert v. Scott, 941 F.2d 1065, 1067-68 (10th Cir. 1991).


The cause standard requires a petitioner to "show that some objective factor external to the defense impeded . . . efforts to comply with the state procedural rules." Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence, a change in the law, and interference by state officials. Id. As for prejudice, a petitioner must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982). A "fundamental miscarriage of justice" instead requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 111 S. Ct. 1454, 1470 (1991).

After carefully reviewing the record in this case, the Court concludes the Petitioner has procedurally defaulted his claims; the Oklahoma Court of Criminal Appeals rested its decision on an adequate and independent state procedural bar; and the Petitioner

has not offered any facts that would demonstrate cause and prejudice under the Coleman standard for his failure to move to withdraw his guilty plea. The fact that Petitioner is a layman does not constitute sufficient cause. See Rodriguez v. Maynard, 948 F.2d 684, 688 (10th Cir. 1991) (petitioner's pro se status and lack of awareness and training of legal issues do not constitute sufficient cause under the cause and prejudice standard). Nor does this case present one of those "extraordinary instances when a constitutional violation probably has caused the conviction of one innocent of the crime." McCleskey, 111 S. Ct. at 1470. Therefore, the Court denies Petitioner's application for a writ of habeas corpus as procedurally barred.

ACCORDINGLY, IT IS HEREBY ORDERED that this petition for a writ of habeas corpus be **denied**.

IT IS SO ORDERED this 15th day of April, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIE COBURN;
BEULAH COBURN;
MYRA L. WALTERS;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.) CIVIL ACTION NO. 93-C-360-B

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14th day
of Apr., 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendant, State of Oklahoma, ex rel. Oklahoma Tax
Commission appears by Kim D. Ashley, Assistant General Counsel;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, Willie Coburn, Beulah Coburn, and
Myra L. Walters appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Willie Coburn, acknowledged
receipt of Summons and Complaint on July 29, 1993; that the
Defendant, Beulah Coburn, acknowledged receipt of Summons and
Complaint on July 9, 1993; that the Defendant, Myra L. Walters,

acknowledged receipt of Summons and Complaint on April 22, 1993.

All other defendants, namely the State of Oklahoma, ex rel. Oklahoma Tax Commission; County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma, have filed timely answers in this action and have approved the form of this judgment as evidenced by their attorney's subscription.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 12, 1993; that the Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, filed its Answer on May 14, 1993; and that the Defendants, Willie Coburn and Beulah Coburn, husband and wife, Myra L. Walters, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Fifty-Seven (57), VALLEY VIEW ACRES THIRD Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on December 23, 1981, the Defendants, Willie Coburn and Beulah Coburn, husband and wife, executed and delivered to Freedom Mortgage Company, a mortgage note in the amount of \$38,800.00, payable in monthly

installments, with interest thereon at the rate of Fifteen and One-half percent (15.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Willie Coburn and Beulah Coburn, husband and wife, executed and delivered to Freedom Mortgage Company a mortgage dated December 23, 1981, covering the above-described property. Said mortgage was recorded on December 29, 1981, in Book 4587, Page 391, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 10, 1985, Freedom Mortgage Company assigned the above-described mortgage note and mortgage to The Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on September 16, 1985, in Book 4892, Page 470, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 1, 1988, the Defendants, Willie Coburn and Beulah Coburn, husband and wife, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on December 1, 1988 and January 1, 1990.

The Court further finds that the Defendants, Willie Coburn and Beulah Coburn, husband and wife, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which

default has continued, and that by reason thereof the Defendants, Willie Coburn and Beulah Coburn, husband and wife, are indebted to the Plaintiff in the principal sum of \$67,886.02, plus interest at the rate of Fifteen and One-half (15.5%) percent per annum from April 9, 1993, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$173.00 (\$165.00 for abstracting and \$8.00 fee for recording Notice of Lis Pendens).

The Defendant, Myra L. Walters, has no interest in or to the Property.

The Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission has a lien on the Property by virtue of tax warrant number 1T190003619-00 dated April 18, 1990, in the amount of \$318.96, plus penalties and interest, but such lien is inferior to the lien of the plaintiff.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$44.00 (1990, in the amount of \$6.00; 1991 in the amount of \$28.00 and 1992 in the amount of \$10.00).

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of

redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, Willie Coburn and Beulah Coburn, in the principal sum of \$67,886.02, plus interest at the rate of Fifteen and One-half (15.5%) percent per annum from April 9, 1993 until judgment, plus interest thereafter at the current legal rate of 4.5 percent per annum until paid, plus the costs of this action in the amount of \$173.00, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Myra L. Walters, has no right, title or interest in the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$318.96, plus penalties and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$44.00, plus penalties and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Willie Coburn and Beulah Coburn, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the plaintiff;

Third:

In payment of the judgment rendered herein in favor of the defendant, State of Oklahoma, ex rel. Oklahoma Tax Commission.

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Tulsa County, Oklahoma.

Fifth:

The Surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Judgment of Foreclosure
USA v. Willie Coburn, et al.
Civil Action No. 93-C-360-E

APPROVED:

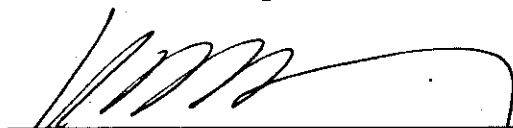
STEPHEN C. LEWIS
United States Attorney



NEAL B. KIRKPATRICK
Assistant United States Attorney
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J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



KIM D. ASHLEY, OBA #
Assistant General Counsel
Attorney for defendant
State of Oklahoma, ex rel.
Oklahoma Tax Commission

NBK:flv

ENTERED ON DOCKET

APR 10 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUDY E. JOHNSTON aka JUDY
JOHNSTON aka JUDY ELAINE
JOHNSTON; PHILLIP L. WILLIAMS;
JOYCE L. WILLIAMS aka JOYCE L.
MENDENHALL; THE PACESETTER
CORPORATION, a corporation;
COUNTY TREASURER, Mayes County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Mayes County,
Oklahoma,

Defendants.

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-332-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14th day
of April, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Kathleen Bliss Adams, Assistant United States
Attorney; the Defendants, **County Treasurer, Mayes County,**
Oklahoma, and Board of County Commissioners, Mayes County,
Oklahoma, appear by Sherry Ann Redding, Assistant District
Attorney, Mayes County, Oklahoma; the Defendant, **Judy E. Johnston**
aka Judy Johnston aka Judy Elaine Johnston, appears through her
attorney Gerald R. Lee; and the Defendants, **Phillip L. Williams,**
Joyce L. Williams aka Joyce L. Mendenhall, and The Pacesetter
Corporation, a corporation, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, **Phillip L. Williams,**
acknowledged receipt of Summons and Complaint on June 5, 1993;

that the Defendant, **Joyce L. Williams aka Joyce L. Mendenhall**, was served with Summons and Complaint by certified mail, return receipt requested, on February 14, 1994 and also acknowledged receipt of Summons and Complaint on February 18, 1994, enclosing a handwritten note stating that she had no interest in the subject property; that the Defendant, **The Pacesetter Corporation, a corporation**, was served with Summons and Complaint on June 16, 1993; that Defendant, **County Treasurer, Mayes County, Oklahoma**, acknowledged receipt of Summons and Complaint on April 24, 1993; and that Defendant, **Board of County Commissioners, Mayes County, Oklahoma**, acknowledged receipt of Summons and Complaint on April 26, 1993.

It appears that the Defendants, **County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma**, filed their Amended Answer and Cross-Petition on March 29, 1994; that the Defendant, **Judy E. Johnston aka Judy Johnston aka Judy Elaine Johnston**, filed her Entry of Appearance through her attorney Gerald R. Lee on September 28, 1993; that the Defendant, **Joyce L. Williams aka Joyce L. Mendenhall**, mailed to Plaintiff a handwritten letter stating that she did not claim any interest in the property, but has otherwise failed to file an answer with the Court and her default has therefore been entered by the Clerk of this Court; and that the Defendants, **Phillip L. Williams and The Pacesetter Corporation, a corporation**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 28, 1990, Judy Elaine Johnston filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-03699-C. On March 21, 1991, a Discharge of Debtor was entered discharging the debtor from all dischargeable debts. Subsequently, Case No. 90-03699-C, United States Bankruptcy Court for the Northern District of Oklahoma, was closed on May 15, 1991.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Mayes County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Numbered Ten (10), in Block Numbered Five (5), of EASTMANOR SECOND, an Addition to the Incorporated City of PRYOR CREEK, Mayes County, Oklahoma, according to the recorded Plat and Survey thereof.

The Court further finds that on April 1, 1977, Phillip L. Williams and Joyce L. Williams executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$23,750.00, payable in monthly installments, with interest thereon at the rate of 8 percent per annum.

The Court further finds that as security for the payment of the above-described note, Phillip L. Williams and Joyce L. Williams executed and delivered to the United States of America, acting through the Farmers Home Administration, a real

estate mortgage dated April 1, 1977, covering the above-described property, situated in the State of Oklahoma, Mayes County. This mortgage was recorded on March 31, 1977, in Book 532, Page 158, in the records of Mayes County, Oklahoma; and was re-recorded on April 1, 1977, in Book 532, Page 206, in the records of Mayes County, Oklahoma.

The Court further finds that on October 25, 1991, the United States of America, acting through the Farmers Home Administration, released Phillip L. Williams and Joyce L. Williams from personal liability to the government for the indebtedness and obligation of the above-described note and mortgage.

The Court further finds that on November 6, 1981, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Assumption Agreement thereby assuming the above-described note and mortgage.

The Court further finds that on November 6, 1981, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$12,820.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum.

The Court further finds that as security for the payment of the above-described note, Judy E. Johnston executed

and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated November 6, 1981, covering the same above-described property, situated in the State of Oklahoma, Mayes County. This mortgage was recorded on November 6, 1981, in Book 594, Page 881, in the records of Mayes County, Oklahoma.

The Court further finds that on November 6, 1981, Judy Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced. On April 20, 1982, this Interest Credit Agreement was cancelled.

The Court further finds that on June 23, 1982, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on June 4, 1984, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 23, 1985, Judy Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest

Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 7, 1986, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on January 16, 1987, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 24, 1987, Judy E. Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on December 12, 1988, Judy Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on November 28, 1989, Judy Johnston executed and delivered to the United States of America, acting through the Farmers Home Administration, an Interest

Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that the Defendant, **Judy E. Johnston aka Judy Johnston aka Judy Elaine Johnston**, made default under the terms of the aforesaid notes, mortgages, assumption agreement, and interest credit agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Judy E. Johnston aka Judy Johnston aka Judy Elaine Johnston**, is indebted to the Plaintiff in the principal sum of \$28,642.54, plus accrued interest in the amount of \$3,599.87 as of March 21, 1992, plus interest accruing thereafter at the rate of \$7.8648 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$9,174.37, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, **County Treasurer, Mayes County, Oklahoma**, has liens on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$606.97, plus penalties and interest, for the years 1992 (\$273.36) and 1993 (\$333.61). Said liens are superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **County Treasurer, Mayes County, Oklahoma**, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$89.59 which became liens on the property as of 1990 (\$33.68), 1991 (\$33.42), and 1992 (\$22.49). Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Board of County Commissioners, Mayes County, Oklahoma**, claims no right, title or interest in the subject real property.

The Court further finds that the Defendants, **Phillip L. Williams, Joyce L. Williams aka Joyce L. Mendenhall, and The Pacesetter Corporation, a corporation**, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting through the Farmers Home Administration, have and recover judgment in rem against the Defendant, **Judy E. Johnston aka Judy Johnston aka Judy Elaine Johnston**, in the principal sum of \$28,642.54, plus accrued interest in the amount of \$3,599.87 as of March 21, 1992, plus interest accruing thereafter at the rate of \$7.8648 per day until judgment, plus interest thereafter at the current legal rate of 4.51 percent per annum until fully paid, and the further sum due and owing under the interest credit agreements of

\$9,174.37, plus interest on that sum at the current legal rate of 4.51 percent per annum until paid, plus the costs of this action in the amount of \$8.00 (fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Mayes County, Oklahoma, have and recover judgment in the amount of \$606.97, plus penalties and interest, for ad valorem taxes for the years 1992 (\$273.36) and 1993 (\$333.61), plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Mayes County, Oklahoma, have and recover judgment in the amount of \$89.59, plus penalties and interest, for personal property taxes for years 1990 (\$33.68), 1991 (\$33.42), and 1992 (\$22.49), plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Phillip L. Williams, Joyce L. Williams aka Joyce L. Mendenhall, The Pacesetter Corporation, a corporation, and Board of County Commissioners, Mayes County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Judy E. Johnston aka Judy Johnston aka Judy Elaine Johnston, to satisfy the in rem judgment of the

Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of Defendant, County Treasurer, Mayes County, Oklahoma, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the judgment rendered herein in favor of Defendant, County Treasurer, Mayes County, Oklahoma, for personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

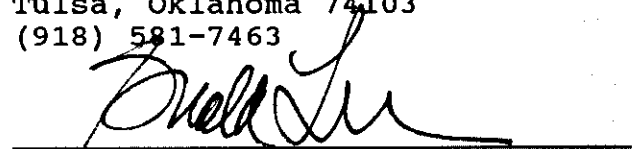
S/ THOMAS H. BRETT


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
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Attorney for Defendant,
Judy E. Johnston aka Judy Johnston
aka Judy Elaine Johnston


SHERRY ANN REDDING, OBA #12830
Assistant District Attorney
P.O. Box 845
Pryor, Oklahoma 74362
Attorney for Defendants,
County Treasurer and Board of County Commissioners
Mayes County, Oklahoma

Judgment of Foreclosure
Civil Action No. 93-C-332-B

KBA:css

APR 18 1994

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

THRIFTY RENT-A-CAR SYSTEM,
INC., an Oklahoma corporation,

Plaintiff,

vs.

Case No. 93-C-473B

WILLIAM W. TIBBETTS, JR., an
individual, WILLIAM W.
TIBBETTS, III, an individual,
PAUL RITCHIE, an individual,
DEBBIE H. RITCHIE, an individual,
RICHARD A. CAILLOUETTE, an
individual, and JAMES LISTON,
an individual,

Defendants.

FILED
APR 14 1994
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FINAL JUDGMENT

This matter comes on for hearing this 14 day of April, 1994, upon Application and Affidavit of the Plaintiff duly made for judgment by default. It appears that Richard A. Caillouette (the "Defendant"), is in default and that the Clerk of the United States District Court for the Northern District of Oklahoma has previously searched the records and entered the default of the Defendant. It further appears upon Plaintiff's Affidavit that Defendant is indebted to Plaintiff in the sum of \$121,916.71 for failure to pay in accordance with certain guarantees executed by Defendant in favor of Plaintiff, together with interest and Plaintiff's expenses incurred in collection of said indebtedness, that default has been entered against Defendant for failure to appear, and that Defendant is not an infant or incompetent person, and not in the military service of the United States. The Court having heard the argument of counsel and being

argument of counsel and being fully advised, finds that there is no just reason for delay and final judgment should be entered for the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff recover from Defendant the sum of \$121,916.71, together with prejudgment interest in the sum of \$12,540.52, reasonable attorneys' fees in the sum of \$46,101.69, costs in the sum of \$2,324.48, and postjudgment interest at the rate of 3.43%, for all of which let execution issue.

Final judgment rendered this 14 day of April, 1994.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HERBERT L. FOSTER;
WILMA RENEE DUMAS
fka Wilma Renee Foster;
BENEFICIAL OKLAHOMA, INC.,
Successor to West Beneficial
Finance, Inc.;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.) CIVIL ACTION NO. 94-C-34-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of Apr., 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the defendant, Wilma Renee
Dumas fka Wilma Renee Foster, appears by Warren G. Morris; and
the Defendant, Herbert L. Foster, appears not, but makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, County Treasurer, Tulsa
County, Oklahoma, acknowledged receipt of Summons and Complaint
on January 27, 1994; and that Defendant, Board of County

on January 27, 1994; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 18, 1994.

The Court further finds that the Defendant, Beneficial Oklahoma, Inc., Successor to West Beneficial Finance, Inc., should be dismissed having previously filed its Release of Real Estate Mortgage.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on March 7, 1994; that the Defendant, Wilma Renee Dumas fka Wilma Renee Foster, filed her Answer on January 27, 1994; and that the Defendant, Herbert L. Foster, has failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Forty-One (41), Block Eighteen (18),
SUBURBAN HILLS ADDITION to the City of Tulsa,
Tulsa County, State of Oklahoma, according to
the recorded plat thereof.

The Court further finds that on November 19, 1976, the Defendant, Herbert L. Foster, executed and delivered to Harry Mortgage Co., a mortgage note in the amount of \$11,000.00, payable in monthly installments, with interest thereon at the rate of Eight percent (8%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Herbert L. Foster, executed and delivered to Harry Mortgage Co., a mortgage dated November 19, 1976, covering the above-described property. Said mortgage was recorded on November 23, 1976, in Book 4240, Page 1682, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 23, 1976, Harry Mortgage Co. assigned the above-described mortgage note and mortgage to Federal National Mortgage Association. This Assignment of Mortgage was recorded on December 1, 1976, in Book 4241, Page 882, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 23, 1990, Federal National Mortgage Association assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on January 29, 1990, in Book 5233, Page 486, in the records of Tulsa County, Oklahoma. This Assignment of Real Estate Mortgage was re-recorded on July 11, 1990, in Book 5264, Page 271, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 1, 1990, the Defendant, Herbert L. Foster, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on February 1, 1990.

The Court further finds that the Defendant, Herbert L. Foster, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Herbert L. Foster, is indebted to the Plaintiff in the principal sum of \$14,142.09, plus interest at the rate of Eight percent per annum from December 1, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$13.00 which became liens on the property as of June 26, 1992 and June 25, 1993. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Wilma Renee Dumas fka Wilma Renee Foster, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Beneficial Oklahoma, Inc., Successor to West Beneficial Finance, Inc., claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, Herbert L. Foster, in the principal sum of \$14,142.09, plus interest at the rate of Eight percent per annum from December 1, 1993 until judgment, plus interest thereafter at the current legal rate of 4.51 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$13.00 for personal property taxes for the years 1991, and 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Wilma Renee Dumas fka Wilma Renee Foster, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Beneficial Oklahoma, Inc., Successor to West Beneficial Finance, Inc., has no right title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Herbert L. Foster, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$13.00, personal property taxes which are currently due and owing.

Fifth:

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BNETT

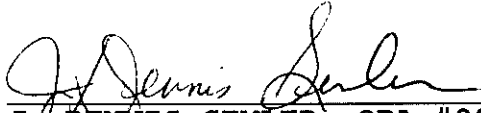
UNITED STATES DISTRICT JUDGE

APPROVED:

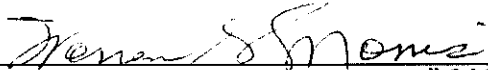
STEPHEN C. LEWIS
United States Attorney



NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



WARREN G. MORRIS, OBA #6431
1918 E. 51st Street
Suite 1-East
Tulsa, Oklahoma 74105
(918) 627-4300
Attorney for Defendant,
Wilma Renee Dumas

Judgment of Foreclosure
Civil Action No. 94-C-34-B

NBK:flv

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES PATRICK SASSON, and
LIBERTY GLASS COMPANY, and
Oklahoma Corporation,

Plaintiffs,

LIBERTY MUTUAL INSURANCE COMPANY,

Intervenor,

vs.

EMHART INDUSTRIES, INC., a
Connecticut Corporation,

Defendant.

ENTERED ON DOCKET

DATE APR 10 1994

CAES NO. 92-C01027-B

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

NOW ON this 14 day of April, 1994, Plaintiff's Application For Dismissal came on before me, the undersigned Judge of the District Court. Upon review of the Application and for good cause shown, Plaintiff's Application is hereby sustained.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the above captioned matter be dismissed without prejudice.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that each party bear their own respective attorney's fees and costs incurred in this matter.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Bryan L. Smith
BRYAN L. SMITH, OBA# 11521
ATTORNEY FOR PLAINTIFF,
JAMES PATRICK SASSON

Richard D. Wagner
RICHARD D. WAGNER, OBA# 009269
ATTORNEY FOR DEFENDANT,
EMHART INDUSTRIES, INC.

Phil Richards
PHIL RICHARDS, OBA# 10457
ATTORNEY FOR DEFENDANT,
LIBERTY GLASS COMPANY

Kevin D. Berry
KEVIN D. BERRY, OBA#
ATTORNEY FOR INTERVENOR,
LIBERTY MUTUAL INSURANCE CO.

ENTERED ON DOCKET
APR 18 1994

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CAROLE DAVIDSON, mother and
next friend of LaTORI BROOKE
DAVIDSON, a minor and
TAMMY JO DAVIDSON,

Plaintiff,

vs.

No. 93-C-851-B

TULSA REGIONAL MEDICAL
CENTER and JIMMY D. CODY,
D.O.,

Defendants.

JOURNAL ENTRY OF JUDGMENT

NOW on this 16th day of March, 1994, the above styled and numbered cause comes on before me, the undersigned Judge, for hearing. Plaintiff, Carole Davidson, mother and next friend of LaTori Brooke Davidson, a minor, appears in person, and is represented by counsel, Stanley D. Monroe. Plaintiff, Tammy Jo Davidson, appears by and through her attorney, Stanley D. Monroe. Defendant, Tulsa Regional Medical Center, appears by and through its attorney, Barkley, Rodolph & McCarthy, by F. Will DeMier, and Defendant, Jimmy D. Cody, D.O., appears by and through his attorney, Rhodes, Hieronymus, Jones, Tucker & Gable, by William S. Leach.

The Court proceeded to hear the statements of counsel, and having heard the testimony of one witness sworn and examined in open Court, having reviewed the pleadings on file herein, and being fully advised in the premises, finds that the settlement agreement entered into between the parties with respect to the minor child should be, and the same is hereby approved, and that the following order should issue, to-wit:

IT IS THEREFORE ORDERED ADJUDGED AND DECREED BY THE COURT that the minor child, LaTori Brooke Davidson, should have and recover judgment herein in the sum of \$87,000, after payment of costs and attorneys fees.

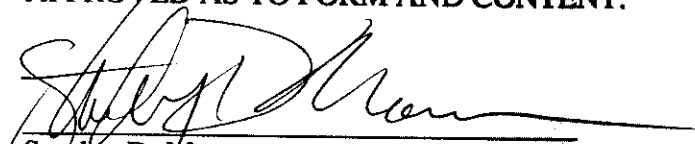
IT IS FURTHER ORDERED ADJUDGED AND DECREED BY THE COURT that the settlement to be paid to the minor child, LaTori Brooke Davidson, should be deposited in a federally insured bank or savings and loan institution, under the direction of her mother, Carole Davidson, to be held therein until LaTori Brooke Davidson becomes 18 years of age.


IT IS FURTHER ORDERED ADJUDGED AND DECREED BY THE COURT that withdrawals of monies from such account shall only be pursuant to Court Order from the Probate Court of the State of Arkansas, County of Boone, in a Guardianship action to be filed therein on behalf of said minor child.

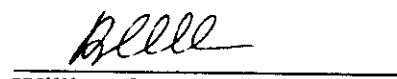
S/ THOMAS R. BRETT

United States District Judge

APPROVED AS TO FORM AND CONTENT:


Stanley D. Monroe
Attorney for Plaintiffs


F. Will DeMier
Barkley, Rodolph & McCarthy
Attorneys for Defendant
Tulsa Regional Medical Center


William S. Leach
Rhodes, Hieronymus, Jones,
Tucker & Gable
Attorneys for Defendant
Jimmy D. Cody, D.O.

APR 18 1994

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRED VAUGHN DUNCAN aka
Fred V. Duncan;
MARY C. DUNCAN aka
Mary Clorene Duncan;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.) CIVIL ACTION NO. 94-C-180-B

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of Apr., 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Fred Vaughn
Duncan aka Fred V. Duncan and Mary C. Duncan aka Mary Clorene
Duncan, appear not, but make default.

The Court being fully advised and having examined the
court file finds that Defendant, Fred Vaughn Duncan aka Fred V.
Duncan, acknowledged receipt of Summons and Complaint on March 5,
1994; that the Defendant, Mary C. Duncan aka Mary Clorene Duncan,
acknowledged receipt of Summons and Complaint on March 5, 1994;
that the Defendant, County Treasurer, Tulsa County, Oklahoma,

acknowledged receipt of Summons and Complaint on March 3, 1994; and that Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 3, 1994.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, filed their Answers on March 21, 1994; that the Defendants, **Fred Vaughn Duncan aka Fred V. Duncan and Mary C. Duncan aka Mary Clorene Duncan**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on June 10, 1993, Fred Vaughn Duncan and Mary Clorene Duncan filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 93-01946-C. On February 2, 1994, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Three (3), TOWN AND COUNTRY ACRES NO. 2, a Subdivision in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on January 15, 1987, Fred V. Duncan and Mary C. Duncan executed and delivered to the United States of America, acting on behalf of the Small Business Administration, their promissory note in the amount of \$68,900.00, payable in monthly installments, with interest thereon at the rate of 4 percent per annum.

The Court further finds that as security for the payment of the above-described note, Fred Vaughn Duncan aka Fred V. Duncan and Mary C. Duncan executed and delivered to the United States of America, acting on behalf of the Small Business Administration, a real estate mortgage dated January 15, 1987, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on January 23, 1987, in Book 4997, Page 28, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Fred Vaughn Duncan aka Fred V. Duncan and Mary C. Duncan aka Mary Clorene Duncan, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Fred Vaughn Duncan aka Fred V. Duncan and Mary C. Duncan aka Mary Clorene Duncan, are indebted to the Plaintiff in the principal sum of \$62,581.30, plus accrued interest in the amount of \$2,381.50 as of January 13, 1994, plus interest accruing thereafter at the rate of 4 percent per annum

or \$6.86 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$235.00 (abstracting fee).

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$992.00, plus penalties and interest, for the years 1992 (\$504.00) and 1993 (\$488.00). Said liens are superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$36.00 which became liens on the property as of 1992 (\$18.00) and 1993 (\$18.00). Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting through the Small Business Administration, have and recover judgment in rem against the Defendants, Fred Vaughn Duncan aka Fred V. Duncan and Mary C. Duncan aka Mary Clorene Duncan, in the principal sum of

\$62,581.30, plus accrued interest in the amount of \$2,381.50 as of January 13, 1994, plus interest accruing thereafter at the rate of 4 percent per annum or \$6.86 per day until judgment, plus interest thereafter at the current legal rate of 4.51 percent per annum until paid, plus the costs of this action in the amount of \$235.00 (abstracting fee), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$992.00, plus penalties and interest, for ad valorem taxes for the years 1992 (\$504.00) and 1993 (\$488.00), plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$36.00 for personal property taxes for the years 1992 (\$18.00) and 1993 (\$18.00), plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Fred Vaughn Duncan aka Fred V. Duncan and Mary C. Duncan aka Mary Clorene Duncan, to satisfy the

in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$992.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$36.00, personal property taxes which are currently due and owing.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

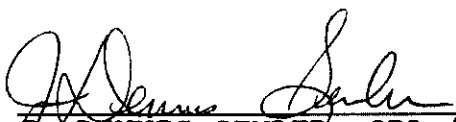
ST. THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



WYN DEE BAKER, OBA #465
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 94-C-180-B

WDB:css

ENTERED ON DOCKET

DATE 4/18/94

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SCOTT WOLF and BRENDA WOLF,

Plaintiffs,

v.

THE ANNUITY BOARD OF THE
SOUTHERN BAPTIST CONVENTION, INC.
CONVENTION, INC.,

Defendants.

§
§
§
§
§
§
§
§
§
§

CASE NO. 92-C-1101-B

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

On this day came on to be heard the Motion to Dismiss of Plaintiffs Scott Wolf and Brenda Wolf. The Court having been advised of the premises, finds that the Motion should be, in all things, granted. Accordingly, it is

ORDERED, ADJUDGED AND DECREED, that the claims and causes of action alleged in the above-styled lawsuit against the Defendant ANNUITY BOARD OF THE SOUTHERN BAPTIST CONVENTION ("Annuity Board") only be, and hereby are, dismissed without prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs of Court incurred in connection with the claims herein by and between the Plaintiffs and Annuity Board be taxed against such party incurring same.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this dismissal will be without prejudice to any claims or causes of action asserted, or which may be asserted in the future, by Plaintiffs against The Prudential Insurance Company of America, Inc., The Prudential Service Bureau, Inc., The Prudential Life Insurance Company, Inc., and The Prudential Insurance Company of America, Inc.

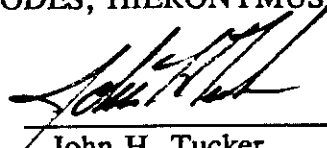
SIGNED this the 15 day of April, 1994.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT


APPROVED AND AGREED TO:

RHODES, HIERONYMUS, JONES, TUCKER & GABLE

By: 
John H. Tucker
SBN #9110
15 W. 6th Street, Suite 2800
Tulsa, Oklahoma 74119-5430
(918) 582-1173

ATTORNEY FOR PLAINTIFFS SCOTT WOLF AND BRENDA WOLF

CROUCH & HALLETT, L.L.P.

By: 
Edward P. Perrin, Jr.
SBN 15796700
717 N. Harwood, Suite 1400
Dallas, Texas 75201
(214) 922-4132

ATTORNEYS FOR ANNUITY BOARD OF THE
SOUTHERN BAPTIST CONVENTION

29200.02

ENTERED IN INDEX

DATE APR 18 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RUNO DWAYNE RANTILLA,

Plaintiff,

vs.

DR. STRIPLEND, et al.,

Defendants.

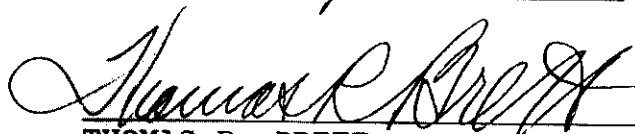
No. 92-C-815-B

ORDER

On October 7, 1992, the Court entered an order granting Plaintiff leave to proceed in forma pauperis, and requiring the Defendants to file a dispositive motion and a special report no later than sixty days from the date of service. In connection with that order, the Clerk sent to the Plaintiff a copy of his complaint, a copy of the October 7, 1992 order, a pre-addressed and stamped envelope, and two U.S.M. 285 forms with a note: "Please sign and return." On November 2, 1992, the above correspondence was returned to the Court because the Plaintiff had moved without leaving a forwarding address.

Because the Plaintiff has failed to notify the Court of his new address for more than one year, the Court hereby **dismisses** this action for lack of service on the Defendants under Fed. R. Civ. P. 4(m), and for lack of prosecution.

SO ORDERED THIS 10 day of apr, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE APR 18 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
GOOD CENTS, INC., a foreign)
corporation; M&S ENTERPRISES,)
INC., a foreign corporation;)
DR. DAVID H. STEINER, an)
individual; STEPHEN R. FARRELL,)
an individual; and MICHAEL W.)
SHENKS, an individual,)
)
Defendants.)

Case No. 93-C-862-B

FILED

APR 18 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

Thrifty Rent-A-Car System, Inc. ("Thrifty") and the Defendants, Good Cents, Inc., Dr. David H. Steiner and Stephen R. Farrell (hereinafter collectively referred to as the "Settling Defendants"), have settled their claims against each other in this action pursuant to the terms of a Settlement and Release Agreement dated as of March 29, 1994 (the "Agreement"). Under the terms of the Agreement, the Settling Defendants have agreed to pay Thrifty a sum of money over time. The Agreement gives Thrifty the right to move this Court for entry of a Judgment in the future, if certain circumstances exist.

It is hereby Ordered that the Clerk administratively terminate this action in his records, without prejudice to the right of Thrifty to reopen this action for the purpose of enforcing its rights under the terms of the Agreement.

IT IS SO ORDERED this 14 day of April, 1994.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

ENTERED ON DOCS

DATE APR 12

MCW/tmm

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROD G. NICHOLAS, an
individual, and DONNA C.
NICHOLAS, an individual,

Plaintiffs,

vs.

JUDY A. RESNICK, an
individual, and SHELTER
MUTUAL INSURANCE CO.,
a corporation,

Defendants.

No. 93-C-423 B

FILED

APR 12 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 14 day of April, 1994, for good cause shown,
the above-entitled action is hereby ordered dismissed, with prejudice.

W. J. BRETT

JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:

William W. Busby
WILLIAM W. BUSBY
Attorney for Plaintiffs,
Rod G. Nicholas and
Donna C. Nicholas

W. Michael Hill
W. MICHAEL HILL
MELVIN C. WEIMAN
Attorneys for Defendant,
Judy A. Resnick

Joseph H. Paulk
JOSEPH H. PAULK
KIMBERLY M. STEELE
Attorneys for Defendant,
Shelter Mutual Insurance Co.

ENTERED ON DOCKET

DATE 4-15-94

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 15 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

LESLIE WILDMAN,

Plaintiff,

vs.

Case No. 92-C-646-E

McDONNELL DOUGLAS CORPORATION,
a Maryland corporation, and
JOHN BADEN, individually and
in his official capacity,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to this suit, by and through their attorneys of record, hereby stipulate pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), that this action should be and hereby is dismissed, with prejudice. Each party is to bear his, her or its own costs of this action and attorney fees.



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ATTORNEY FOR McDONNELL DOUGLAS
CORPORATION

ENTERED ON DOCKET
DATE APR 15 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HELEN ISRAEL,

Plaintiff,

vs.

AVIS RENT-A-CAR, INC.,
A corporation,

Defendant,

vs.

MID-CONTINENT CASUALTY CO.,
Intervenor.

Case No. 92-C-446-B ✓

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Now before the Court for its consideration is the Motion to Reinstate Judgment, for New Trial, or to Amend Judgment (Docket #126) filed by Defendant, Avis Rent-A-Car on March 14, 1994, and the Motion to Correct Journal Entry (Docket #127) filed by Plaintiff, Helen Israel.

This matter was originally tried to a jury August 26, 1993, through September 2, 1993, and resulted in a Defendant's verdict. This Court entered an Order November 8, 1993, finding that the jury's verdict shocked the conscience of the Court and granting Plaintiff's motion for a new trial. The matter tried to a jury a second time February 28 through March 3, 1994, which resulted in a Plaintiff's verdict and an award of \$1,900,000.00 million in actual damages and \$250,000.00 in punitive damages.

I.

Avis Rent-A-Car ("Avis") first submits that this Court should

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not have granted Plaintiff's motion for new trial following the first trial. Avis incorporates by reference the arguments and authorities as presented in its earlier briefs opposing Plaintiff's motion for a new trial. Helen Israel ("Israel") opposes this motion based on the arguments and authorities as presented in her own earlier briefs. Avis provides no new basis or authority in support of its position that the Court should not have awarded the Plaintiff a new trial. Thus, for the reasons stated in this Court's Order of November 8, 1993, Defendant's Motion for a New Trial is DENIED.

II.

Avis also submits that the evidence does not support an award of punitive damages. Avis contends the consistent testimony of its employee, Harold Engle, that his foot was on the brake at all times does not support a finding of willful or wanton conduct. Although no evidence was presented that the driver willfully drove the van so as to strike the Plaintiff, the Plaintiff argues the evidence does support a finding that Engle's conduct was grossly negligent, and thus an award of punitive damages was proper.¹

¹ Israel points to the following actions by Avis' driver as support for a finding of gross negligence.

1. He knew that people crossed the service area;
2. He paid no attention to the engine "revs" before putting the van into gear;
3. He stood on the brake (in fact the accelerator);
4. He did not look ahead until after putting the van in gear;
5. He swerved to avoid Mrs. Israel, but turned back after seeing other vehicles;
6. He failed to honk the horn.

Gross negligence may be deemed equivalent of willful and wanton misconduct for punitive damages assessment when it demonstrates such a total disregard of another's rights that it may be equated with evil intent or implies such entire want of care or recklessness of conduct that it (a) can be likened to positive misconduct or (b) evinces a conscious indifference to predictable adverse consequences.²

Based on this standard, the Court concludes the evidence presented did not support a finding of gross negligence or an award of punitive damages. Punitive damages are designed to punish or make an example of a party. The Court is unpersuaded that such an award is justified under these circumstances, and as a result, Avis Rent-A-Car's Motion to Strike the Punitive Damage Award is GRANTED.³ An amended judgment will be entered simultaneously herewith.

III.

Finally, Avis contends that it is entitled to a new trial or to a remittitur of any award in excess of \$500,000. Since this case had gone to jury once before, Avis asserts that Israel, in effect, had a dress rehearsal which allowed her to improve the presentation of her case in the second trial. Assuming Plaintiff benefitted from the "dress rehearsal", the same could likewise be said for Avis. Defendant also contends it was prejudiced by the Court's ruling that Plaintiff could present two new witnesses at

² Graham v. Keuchel, 847 P.2d 342, 362 (Okla. 1993).

³ Avis also submits that instructing the jury on punitive damages was so prejudicial as to taint the finding of liability and the assessment of actual damages and the Court should therefore award Avis a new trial. Avis offers no evidence or authority to support this position and the Court is not persuaded Avis was prejudiced by the punitive damages instruction.

the second trial.⁴ The Court reaffirms its previous ruling that the two new witnesses presented by Plaintiff were relevant and necessary, and did not unfairly prejudice the Defendant. Avis was given notice prior to the second trial that these two witnesses would be called and Avis deposed both of them. The Court is not persuaded that Avis was unfairly prejudiced by their testimony.

Avis alternatively asks for a remittitur of a substantial amount of the actual damages award. Avis' basic premise is that the award is simply unreasonably high in light of the evidence presented. While Avis correctly points out that damage awards must be reasonable, such reasonableness must be judged on the facts of the instant case and the Court is not persuaded that the damage award in this matter was unreasonably high in light of the injuries sustained. The Court concludes that the evidence reasonably supported the \$2 million in damages awarded by the jury, and as a result, Avis Rent-A-Car's Motion for New Trial or Remittitur is DENIED.

IV.

Israel filed her complaint in this action May 21, 1992. The Court's Judgment of March 3, 1994, incorrectly stated that her

⁴ The new witnesses presented at the second trial were Larry Burchett, Plaintiff's supervisor, and Dr. Anthony Billings, a treating physician. Burchett testified that he had observed Plaintiff's work (subsequent to the first trial) and he concluded she could no longer adequately perform her job duties. This testimony was necessary to properly establish Plaintiff's damages. Dr. Billings testified that he had performed a back surgery on the Plaintiff and had removed a disc. His testimony was relevant in determining damages and was necessary to rebut the testimony of Dr. Sami Framjee, who had questioned whether a disc had actually been removed.

complaint was filed on May 31, 1992. The Amended Judgment filed this date shall correctly reflect that pre-judgment interest shall be calculated beginning May 21, 1992, the date the complaint was filed.

IT IS SO ORDERED THIS 15 DAY OF APRIL, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED ON DOCKET
APR 15 1994

HELEN ISRAEL,

Plaintiff,

vs.

AVIS RENT-A-CAR SYSTEM, INC.,

Defendant and Third-
Party Plaintiff,

vs.

MID-CONTINENT CASUALTY COMPANY,

Intervenor.

No. 92-C-446-B

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

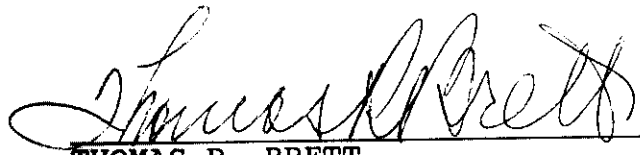
A M E N D E D J U D G M E N T

In keeping with the Court's order of this date, Judgment is hereby entered in favor of the Plaintiff, Helen Israel, and against the Defendant, Avis Rent-a-Car System, Inc., in the sum of \$1,900,000.00, with pre-judgment interest thereon at the rate of 9.58% per annum from May 21, 1992 to December 31, 1992, from January 1, 1993 to December 31, 1993, at the rate of 7.42% per annum, and from January 1, 1994 to March 3, 1994, at the rate of 6.99% per annum; and interest at the rate of 3.74% per annum on said sum from March 3, 1994, until paid. The Defendant Avis Rent-A-Car System, Inc., is hereby granted judgment against Plaintiff, Helen Israel, on Plaintiff's alleged punitive damage claim.

The Intervenor, Mid-Continent Casualty Company, is hereby awarded the sum of \$168,275.43 from the Plaintiff's award herein, as and for its subrogation claim acknowledged by the parties herein. Further, as the prevailing party, the Plaintiff is awarded

costs against the Defendant if timely applied for pursuant to Local Rule 54.1, and the parties are to pay their own respective attorney fees.

DATED this 15th day of APRIL, 1994.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM INC.,)

Plaintiff,)

vs.)

PARVIZ MANDEGARIAN,)

Defendant.)

Case No. 92-C-1120-B

APR 15 1994

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 14 day of April, 1994.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SPECIAL SERVICE SYSTEMS INC.,)

Plaintiff,)

vs.)

FIRST CITY BANCORPORATION OF)
TEXAS, INC.)

Defendant.)

ENTERED ON DOCKET
DATE APR 15 1994

Case No. 92-C-538-B ✓

FILED

APR 15 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this/4 day of April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

USA,

Plaintiff,

vs.

JOEL L. KRUEGER,

Defendant.

Case No. 92-C-319-B

ENTERED ON DOCKET
DATE APR 15 1994

FILED

APR 15 1994

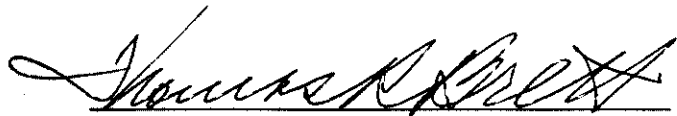
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Defendant having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 14 day of April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

3

ENTERED ON DOCKET

DATE 4-15-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRADLEY D. BROSIUS;
LOU ANN BROSIUS;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-371-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of April, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX
COMMISSION appears by Kim D. Ashley, Assistant General Counsel;
the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and
BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, BRADLEY D. BROSIUS AND LOU ANN
BROSIUS, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, BRADLEY D. BROSIUS and LOU
ANN BROSIUS, were served a copy of Summons and Complaint on
July 29, 1993; that the Defendant, STATE OF OKLAHOMA, ex rel.
OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and

Complaint on April 30, 1993; that Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 10, 1993; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 27, 1993.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, filed his answer on May 14, 1993; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed its Answer on May 14, 1993; that the Defendant, STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION, filed its Answer, Counterclaim and Cross-Claim on May 21, 1993; and that the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Three (3), Block Seven (7), SOUTHMONT ESTATES EXTENDED ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 2, 1985, Peter L. Stainback and Judy D. Stainback, executed and delivered to Liberty Mortgage Company a mortgage note in the amount of \$85,635.00, payable in monthly installments, with interest thereon at the rate of Eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, Peter L. Stainback and Judy D. Stainback, executed and delivered to Liberty Mortgage Company a mortgage dated August 2, 1985, covering the above-described property. Said mortgage was recorded on August 6, 1985, in Book 4882, Page 1427, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 9, 1988, Liberty Mortgage Company erroneously assigned the above-described mortgage note and mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 21, 1988, in Book 5135, Page 2075, in the records of Tulsa County, Oklahoma.

On, December 9, 1988, The Liberty National Bank and Trust Co. of Oklahoma City corrected the erroneous assignment described above by assigning the mortgage note and mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This correction was recorded in Book 5145 at Page 2259, in the records of Tulsa County, Oklahoma.

On December 11, 1986, Peter L. Stainback and Judy D. Stainback, husband and wife, granted a general warranty deed covering the Property to the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, husband and wife. This deed was recorded with the Tulsa County Clerk on December 30, 1986, in Book 4991 at Page 2886, and the Defendants BRADLEY K. BROSIUS and LOU ANN BROSIUS

assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on November 1, 1988, the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, husband and wife, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on January 1, 1990, February 1, 1991, October 1, 1991 and January 1, 1992.

The Court further finds that the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, are indebted to the Plaintiff in the principal sum of \$132,416.17, plus interest at the rate of Eleven (11%) percent per annum from April 22, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$208.00 (\$200.00 for abstracting fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in or to the subject property.

The Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property by virtue of a Certificate of Tax Indebtedness dated January 26, 1993 and filed February 4, 1993, in the amount of \$400.49, plus penalties and interest, but such lien is inferior to the lien of the Plaintiff.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, in the principal sum of \$132,416.17, plus interest at the rate of Eleven (11%) percent per annum from April 22, 1993 until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action in the amount of \$208.00 (\$200.00 abstracting fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS,

Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel, OKLAHOMA TAX COMMISSION, have and recover judgment in the amount of \$400.49, plus penalties and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the judgment rendered herein in favor of the defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

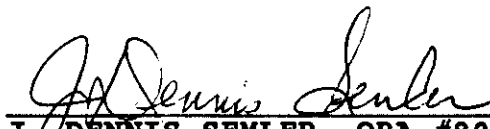
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
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County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


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P.O. Box 53248
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(405) 521-3141
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 93-C-371-E

NBK:flv

ENTERED ON DOCKET

DATE

7-15-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRADLEY D. BROSIUS;
LOU ANN BROSIUS;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 93-C-371-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 14 day
of April, 1994. The Plaintiff appears by Stephen C.
Lewis, United States Attorney for the Northern District of
Oklahoma, through Neal B. Kirkpatrick, Assistant United States
Attorney; the Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX
COMMISSION appears by Kim D. Ashley, Assistant General Counsel;
the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and
BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendants, BRADLEY D. BROSIUS AND LOU ANN
BROSIUS, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendants, BRADLEY D. BROSIUS and LOU
ANN BROSIUS, were served a copy of Summons and Complaint on
July 29, 1993; that the Defendant, STATE OF OKLAHOMA, ex rel.
OKLAHOMA TAX COMMISSION, acknowledged receipt of Summons and

Complaint on April 30, 1993; that Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on May 10, 1993; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on April 27, 1993.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, filed his answer on May 14, 1993; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed its Answer on May 14, 1993; that the Defendant, STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION, filed its Answer, Counterclaim and Cross-Claim on May 21, 1993; and that the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, have failed to answer and default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Three (3), Block Seven (7), SOUTHMONT ESTATES EXTENDED ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 2, 1985, Peter L. Stainback and Judy D. Stainback, executed and delivered to Liberty Mortgage Company a mortgage note in the amount of \$85,635.00, payable in monthly installments, with interest thereon at the rate of Eleven percent (11%) per annum.

The Court further finds that as security for the payment of the above-described note, Peter L. Stainback and Judy D. Stainback, executed and delivered to Liberty Mortgage Company a mortgage dated August 2, 1985, covering the above-described property. Said mortgage was recorded on August 6, 1985, in Book 4882, Page 1427, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 9, 1988, Liberty Mortgage Company erroneously assigned the above-described mortgage note and mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 21, 1988, in Book 5135, Page 2075, in the records of Tulsa County, Oklahoma.

On, December 9, 1988, The Liberty National Bank and Trust Co. of Oklahoma City corrected the erroneous assignment described above by assigning the mortgage note and mortgage securing it to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This correction was recorded in Book 5145 at Page 2259, in the records of Tulsa County, Oklahoma.

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assumed thereafter payment of the amount due pursuant to the note and mortgage described above.

The Court further finds that on November 1, 1988, the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, husband and wife, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on January 1, 1990, February 1, 1991, October 1, 1991 and January 1, 1992.

The Court further finds that the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, are indebted to the Plaintiff in the principal sum of \$132,416.17, plus interest at the rate of Eleven (11%) percent per annum from April 22, 1993 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$208.00 (\$200.00 for abstracting fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in or to the subject property.

The Defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION, has a lien on the property by virtue of a Certificate of Tax Indebtedness dated January 26, 1993 and filed February 4, 1993, in the amount of \$400.49, plus penalties and interest, but such lien is inferior to the lien of the Plaintiff.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, in the principal sum of \$132,416.17, plus interest at the rate of Eleven (11%) percent per annum from April 22, 1993 until judgment, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action in the amount of \$208.00 (\$200.00 abstracting fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS,

Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, STATE OF OKLAHOMA, ex rel, OKLAHOMA TAX COMMISSION, have and recover judgment in the amount of \$400.49, plus penalties and interest.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, BRADLEY D. BROSIUS and LOU ANN BROSIUS, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the judgment rendered herein in favor of the defendant, STATE OF OKLAHOMA, ex rel. OKLAHOMA TAX COMMISSION;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

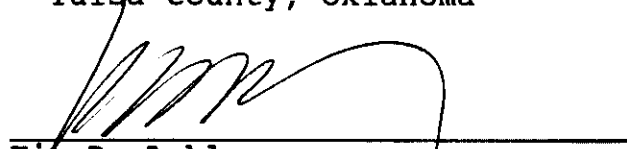
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


NEAL B. KIRKPATRICK
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


Kim D. Ashley
Assistant General Counsel
P.O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma, ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 93-C-371-E

NBK:flv

ENTERED ON DOCKET

DATE 4-15-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:

B A INVESTMENT PROPERTIES,
FAMILY PROPERTIES, INC.,
N. D. HENSHAW and BARBARA F.
HENSHAW,

Debtors.

BANK OF OKLAHOMA, N.A.,

Appellant,

vs.

N. D. HENSHAW, BARBARA F.
HENSHAW AND B A INVESTMENT
PROPERTIES,

Appellees.

Jointly Administered Under
Case No. 92-04339-C
(Chapter 11)

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Consolidated Under
District Case No. 93-C-785E

ORDER

This cause comes before the Court on the Motion to Dismiss
Appeals filed by Appellant, Bank of Oklahoma, N.A.

The Court being fully advised as to the premises hereby finds
that good cause exists to dismiss the instant appeals.

IT IS THEREFORE ORDERED that the instant appeals, to-wit:
Case No. 93-C-785E and Case No. 93-C-1019-E, are hereby dismissed.

DATED this 13 day of April, 1994.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
James M. Reed, OBA #7466
Pamela H. Goldberg, OBA #12310
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR BANK OF OKLAHOMA, N.A.

ENTERED ON DOCKET

DATE 4/15/94

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 15 1994

BOBBY G. APPLEMAN,

Plaintiff,

vs.

SOUTHWESTERN BELL TELEPHONE
COMPANY, a Missouri
Corporation,

Defendant.

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-540-B

O R D E R

Now before the Court for its consideration is Defendant, Southwestern Bell Telephone Company's Motion for Summary Judgement (Docket #6) pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Plaintiff brings this action alleging violations of Title VII, The Age Discrimination Employment Act of 1967 (ADEA), and Oklahoma's prohibition against employment discrimination under Okla.Stat. tit.25, §§ 1101 et seq. The uncontroverted material facts are as follows:

1. Plaintiff, a 49 year-old Native American Indian, is an employee of Southwestern Bell Telephone Company (SWBT).
2. SWBT is an employer within the meaning of Title VII, 42 U.S.C. § 2000(e)(b) and 29 U.S.C. § 629(b).
3. On October 1, 1990, SWBT implemented the Management Assessment Process which was used until January 31, 1994, to assess the managerial capabilities of non-management employees. Phase I of the Management Assessment Process utilized a paper and pencil test known as the Management Profile Record (MPR).

4. Plaintiff, a non-management employee, advised management of his desire to be promoted.

5. Plaintiff took the MPR on August 23, 1991, and received an overall rating of "low" as to his probability of becoming a successful manager.

6. Since January 1992, at least one younger, white male has been promoted or hired into a management position by SWBT.

7. Plaintiff has been denied consideration for promotion to a management position.

The Standard of Fed. R. Civ. P. 56
Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322. 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342, 345 (10th Cir. 1986). *cert den.* 480 U.S. 947 (1987). In Celotex, 477 U.S. at 322 (1986), it is stated:

"[T]he plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish

that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585-86, 106 S.Ct. 1348, 1355, 89 L.Ed.2d 538, (1986).

A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must affirmatively prove specific facts showing there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., *supra*, wherein the Court stated that:

"... The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff..." *Id.* at 252.

The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hospital of Sheridan County, 850 F.2d 1384, 1393 (10th Cir. 1988).

The Title VII Claim

Defendant has moved for summary judgment because it alleges that Plaintiff cannot establish the prima facie elements of his "failure to promote" Title VII claim. Defendant maintains that, in order to be qualified for a management position, all non-management employees are required to be qualified¹ on the MPR, or to have been a manager previously with SWBT. Defendant specifically contends

¹ To "qualify" for a management position on the MPR means receiving a score of "intermediate" or "high." Plaintiff received a rating of "low" on his MPR.

that Plaintiff was not considered for a management position because Plaintiff was neither qualified on the MPR, nor had he ever been a manager of SWBT. Furthermore, Defendant claims that no non-management employee who received a low rating on the MPR has ever been promoted regardless of race.

The Tenth Circuit Court of Appeals has adopted a four part test for determining whether a plaintiff has established a prima facie case of discriminatory failure to promote under Title VII. Plaintiff must show: (1) that he belongs to a racial minority; (2) that he applied for and was qualified for a job for which the employer was seeking applicants; (3) that despite his qualifications he was rejected; and (4) that the position continued to remain open and the employer continued to seek applicants from persons of complainant's qualifications. Hooks v. Diamond Crystal Specialty Foods, Inc., 997 F.2d 793, 796 (10th Cir. 1993) (Citing McDonnell Douglas, infra).

After a Plaintiff has established his prima facie case, the burden then shifts to the employer "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1972). If Defendant meets its burden of production, Plaintiff must then carry the ultimate burden of proving that Defendant's reasons are pretextual and its true intent was to discriminate. St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742, 2748; 61 U.S.L.W. 4782, 4787, (U.S. June 25, 1993) (No. 92-602). A mere showing that an employer's articulated reasons are wrong will not suffice. Kendall v.

Watkins, 998 F.2d 848, 851-52 (10th Cir. 1993).

However, under this three-tier analysis, "[t]he burden of establishing a prima facie case is not onerous." Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). The Supreme Court has expressly rejected the argument that meeting the specific McDonnell Douglas requirements is the "only means" by which plaintiffs may make the required prima facie showing. See Teamsters v. United States, 431 U.S. 324, 358 (1977). The underlying goal is that the plaintiff carry the initial burden of offering evidence which creates an inference that an employment decision was based on an illegal discriminatory criterion. Id.

Herein, it is uncontested that Plaintiff is a member of the protected class, and that he had applied for a promotion. An issue surfaces, however, on the question of whether Appleman was minimally qualified.

Defendant contends that Appleman was not qualified because of his low rating on the MPR. To support this contention, Defendant introduces the affidavit of Barbara K. Hayden, the Manager of Human Resources and Staffing for SWBT, Oklahoma, wherein Hayden states that the MPR is "a validated company-wide test proven to be an accurate predictor of management potential." Exhibit A to Defendant's Motion for Summary Judgment, p.2. However, Defendant introduces no evidence to support Hayden's mere allegations of the test's validity.

The Court finds that Hayden's statement as to the test's validity is insufficient for a finding of validity. The Uniform

Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607.9 (1991), requires some empirical evidence to support the claim of a test's validity; assumptions of validity are prohibited. Section 1607.9 states in part:

"Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other nonempirical or anecdotal accounts of selection practices or selection outcomes." 29 C.F.R. § 1607.9 (1991) (Emphasis added).

The Uniform Guidelines require SWBT to produce concrete empirical evidence demonstrating the validity of the test used by SWBT. Defendant has failed to meet this burden. Thus, a material issue of fact exists as to the test's validity and therefore Plaintiff's qualifications. To resist summary judgment, Plaintiff need not prove that he qualified for promotions under a system he alleges to be discriminatory unless the legitimacy of that system is first established. Hung Ping Wang v. Hoffman, 649 F.2d 1146, 1148 (9th Cir. 1982). Having established that a material issue of fact exists, Defendant's Motion for Summary Judgment on the Title VII claim is DENIED.

The ADEA Claim Under 29 U.S.C. § 623

Defendant also claims in its motion that Plaintiff has failed to present a prima facie case of discrimination under the Age

Discrimination in Employment Act of 1967 (ADEA) as amended, 29 U.S.C. § 623 (1982). To establish a cause of action under the statute, a complainant must show that he: (1) was within the protected age group at the time of the failure to promote; (2) was qualified for promotion; (3) was not promoted; and (4) was passed over for an available promotion in favor of someone younger. Furr v. AT&T Technologies, Inc., 824 F.2d 1537, 1542 (10th Cir. 1987).

It is clear that Plaintiff was a member of the protected class under the ADEA when he took the MPR in August, 1991. The issue again is framed around whether or not Plaintiff was qualified. This issue cannot be resolved until the legitimacy of the test is established. As noted above, Defendant must have some empirical evidence to support its claim of test validity. It cannot rest on mere testimonial statements alone. See 29 C.F.R. § 1607.9. As with the Title VII claim, Defendant has failed to prove specific facts tending to prove that the test is valid, and a question still exists as to the validity of the test and therefore the qualifications of Plaintiff. Accordingly, Defendant's motion as to the ADEA claim is also DENIED.

**The Public Policy Claim Under
Okla.Stat. tit. 25, § 1101 et seq.**

Defendant further alleges that it did not violate Okla.Stat. tit. 25, §§ 1101 et seq. in failing to promote Plaintiff for the same reasons as set forth above; namely, that Plaintiff was not qualified. Plaintiff claims that he was qualified, and even though §§ 1101 et seq. primarily involves cases of wrongful discharge in

the employment-at-will context, the public policy interest in nondiscrimination in employment is equally of substance in the failure to hire context.

However, as stated previously, there is a dispute of material fact as to whether Plaintiff evaluated by a valid test. Nevertheless, assuming Plaintiff was qualified, the "Burk tort"² (as it is commonly referred to) is primarily limited to wrongful terminations and discharges. See Sanchez v. Phillip Morris, Inc., 992 F.2d 244, 248-49 (10th Cir. 1993). The Court in that case noted that the Oklahoma Supreme Court has been very precise in creating narrow exceptions to the employment-at-will doctrine. Furthermore, the Tenth Circuit has stated that it is unwilling to unnecessarily expand those exceptions. Id. at 249. Hence, even if Plaintiff were qualified, the facts would not give rise a cause of action under Okla.Stat. tit. 25, §§ 1101 et seq. Therefore, summary judgment as to Plaintiff's public policy cause of action must be GRANTED.

The Relief Requested

Lastly, Defendant claims that Plaintiff may not recover punitive damages under Title VII or the ADEA. Defendant maintains that the Tenth Circuit, in Pearson v. Western Electric, 542 F.2d 1150 (10th Cir. 1976), held as a matter of law that the District Court was correct in finding that compensatory and punitive damages may not be awarded under 42 U.S.C. § 2000e-5(g). Defendant is

² Burk v. K-Mart, 770 P.2d 24 (Okla. 1989).

correct in asserting that, in 1976 compensatory and punitive damages were not recoverable in Title VII cases. However, this law changed in November of 1991. 42 U.S.C. § 1981a (Supp. III 1991) Section 1981a(a)(1) states in part:

In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) ... against a respondent who engaged in unlawful intentional discrimination ... the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section....

Furthermore, subsection (b)(1) allows punitive damages if:

the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

Compensatory and punitive damages are now allowable for Title VII actions, effective November 21, 1991. Furthermore, it has been held that section 1981(a) does not apply to cases retroactively. Smith v. Colorado Interstate Gas Co., 794 F.Supp. 1035, 1039 (D.Colo. 1992). Hence, the discriminatory act must have taken place on or after the effective date of the statute.

The Court has before it insufficient evidence to determine whether or not the alleged discrimination occurred before or after the effective date of section 1981(a). Therefore, since there still exists an issue of material fact concerning the actual time frame of the alleged discrimination, summary judgment on the issue of compensatory and punitive damages under Title VII must be DENIED.

As to the compensatory and punitive damages claim under the ADEA, the Tenth Circuit Court of Appeals has ruled that damages

other than those enumerated in the ADEA are not recoverable. Perrell v. Financeamerica Corp., 726 F.2d 654, 657 (10th Cir. 1984). Plaintiff concedes this point; therefore summary judgment would be proper. The Court thus concludes that summary judgment on the issue of punitive and compensatory damages under the ADEA should be GRANTED.

SUMMARY

For the foregoing reasons, it is therefore ORDERED that Defendant Southwestern Bell Telephone Company's Motion for Summary Judgment is GRANTED in part, DENIED in part, as follows:

1. Defendant's Motion for Summary Judgment on the Title VII claim is DENIED;
2. Defendant's Motion for Summary Judgment on the ADEA claim is DENIED;
3. Defendant's Motion for Summary Judgment as to Plaintiff's state public policy claim is GRANTED;
4. Defendant's Motion for Summary Judgment on the issue of compensatory and punitive damages under Title VII is DENIED; and
5. Defendant's Motion for Summary Judgment on the issue of compensatory and punitive damages under the ADEA is GRANTED.

IT IS SO ORDERED THIS 15th DAY OF April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 4/15/94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE: U. S. BANKRUPTCY CASE
NO. 92-00803-C, Chapter 11,

TULSA ENERGY, INC.,

Debtor.

Adversary No. 93-0384C

TULSA ENERGY, INC.,

Plaintiff,

Case No. 94-C-32B

vs.

JAMES CHEATWOOD,

Defendant.

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

On this 14 day of Apr., 1994, the Motion to Dismiss filed by the Defendant comes on for hearing.

IT IS THEREFORE ORDERED that the above-entitled cause be, and the same hereby is dismissed.

S/ THOMAS R. BRETT,

United States District Judge

ENTERED ON DOCKET

DATE 4/15/94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

HOLDEN DUNFORD, JR.,

Plaintiff,

v.

JIMMIE LEE BROWN, et al.,

Defendants.

92-C-691-B

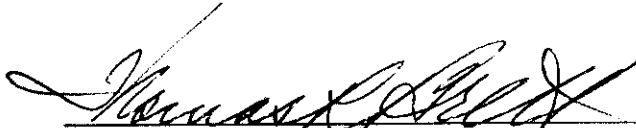
ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed March 21, 1994, in which the Magistrate Judge recommended that the Motion to Dismiss of Assistant District Attorney E. R. "Ned" Turnbull (Docket #19)¹ and Judge Allen Klein's Motion to Dismiss (#22) be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that the Motion to Dismiss of Assistant District Attorney E. R. "Ned" Turnbull (Docket #19) and Judge Allen Klein's Motion to Dismiss (#22) are granted.

Dated this 14 day of April, 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

T:dunford.orr

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

FILED ON DOCKET
APR 14 1994
FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

APR 13 1994

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Paul Gandy,

Defendant.

Civil Action No. 93-CV-213

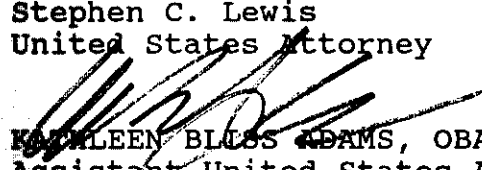
NOTICE OF DISMISSAL

COMES NOW the United States of America by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Kathleen Bliss Adams, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 12th day of April, 1994.

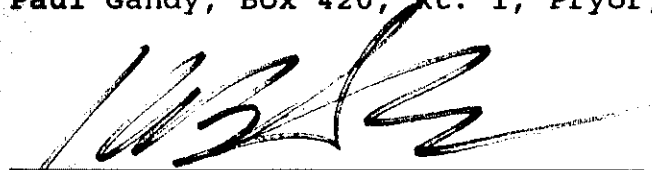
UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney


KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of April, 1994, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Paul Gandy, Box 420, Rt. 1, Pryor, OK 73361.


Assistant United States Attorney

ENTERED ON DOCKET

DATE 4-14-94

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JIMMY RAY HENDREN,

Defendant.

Civil Action No. 94-C-38-E

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFAULT JUDGMENT

This matter comes on for consideration this 13 day of April, 1994, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Jimmy Ray Hendren, appearing not.

The Court being fully advised and having examined the Court file finds as follows:

1. Defendant, Jimmy Ray Hendren, acknowledged receipt of Summons and Complaint on January 25, 1994, as indicated on the Process Receipt and Return, Form USM-285 which is attached hereto and incorporated as Exhibit "A."

2. The Defendant, Jimmy Ray Hendren, is not an infant or an incompetent person, and has not been in the military since filing of this Complaint or for six months prior to said filing of the Complaint.

3. The time within which the Defendant could have answered or otherwise moved has expired and has not been extended.

4. The Defendant, Jimmy Ray Hendren, has not answered or otherwise moved and default has therefore been duly entered by the Clerk of the District Court for the Northern District of Oklahoma.

5. The Defendant Jimmy Ray Hendren is indebted to the United States in the amount of \$9,500.00, for violations of the Packers and Stockyards Act, 1921, as amended and supplemented, 7. U.S.C. 181 et seq., and the regulations promulgated thereunder, 9 C.F.R. § 201.1 et seq., without being registered with the Secretary of the Department of Agriculture, and providing adequate bond, and from issuing insufficient funds checks, and that the United States is entitled to judgment in those amounts as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the United States have and recover judgment against the Defendant, Jimmy Ray Hendren, as follows:

1. The United States shall have judgment against the Defendant, Jimmy Ray Hendren, the sum of \$9,500.00, including costs of prosecution, and interest in the amount of 4.51 per annum.

2. The Defendant, Jimmy Ray Hendren, shall be permanently enjoined from engaging in the business as a dealer subject to the Packers and Stockyards Act, 1921, as amended and supplemented, 7 U.S.C. § 181 et seq., and the regulations promulgated thereunder, 9 C.F.R. § 201.1 et seq., without being registered with the Secretary of the Department of Agriculture, and providing adequate bond, and from issuing insufficient funds checks.

3. The Defendant is hereby suspended in accordance with the Secretary's order suspending him as a registrant under the Act for

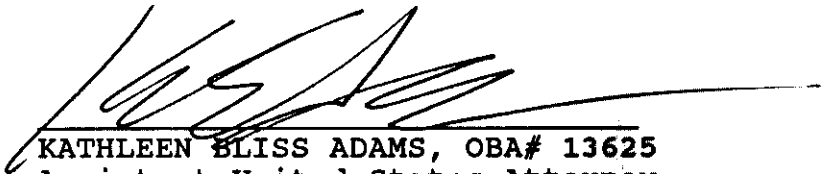
a period of five (5) years. The commencement of the period of suspension shall begin upon the filing of this order.

4. The Defendant, Jimmy Ray Hendren, shall pay the cost of prosecution of this action which shall be incorporated into this Judgment upon submission by the United States within ten (10) days of this Order.

S/ JAMES O. ELLISON

United States District Judge

Submitted by:



KATHLEEN BLISS ADAMS, OBA# 13625
Assistant United States Attorney
3900 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103
(918) 581-7463

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF UNITED STATES OF AMERICA	COURT CASE NUMBER 94-C-38-E
DEFENDANT JIMMY RAY HENDREN	TYPE OF PROCESS COMPLAINT + Summons
SERVE → AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN JIMMY RAY HENDREN, d/b/a J & H Farms and J & H Cattle Co. ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) Route 4, Box 35, Vinita, OK 74301

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:	Number of process to be served with this Form - 285	JAN 11 1994
Kathleen Bliss Adams Assistant U.S. Attorney 333 W. Fourth, Suite 3460 Tulsa, OK 74103	Number of parties to be served in this case	
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):
Fold
Phone: (918) 326-4378

PLEASE OBTAIN PERSONAL SERVICE OF ATTACHED COMPLAINT.

Signature of Attorney or other Originator requesting service on behalf of: Kathleen Bliss Adams, AUSA	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER (918) 581-7463	DATE 1/14/94
--	---	------------------------------------	-----------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No. 62	District to Serve No. 62	Signature of Authorized USMS Deputy or Clerk William Hunt	Date 1/14/94
---	---------------	------------------------------	-----------------------------	--	-----------------

I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service 1-25-94 Time 2:15 pm
	Signature of U.S. Marshal or Deputy William Hunt

Service Fee \$ 3.00	Total Mileage Charges (including endpapers) \$ 15.00	Forwarding Fee	Total Charges \$ 18.00	Advance Deposits	Amount owed to U.S. Marshal or Amount of Refund
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REMARKS:

1-25-94 2:15 PM I served in person Mr. Jimmy Hendren at his residence Rt. 4 Box 35 Vinita, OK



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed via United States Postal Service, on this the 12 day of April, 1994, to Jimmy Ray Hendren, Route 4, Box 35, Vinita, OK 74301

A handwritten signature in black ink, appearing to read 'K. Adams', is written over a horizontal line.

KATHLEEN BLISS ADAMS
ASSISTANT UNITED STATES ATTORNEY

ENTERED ON DOCKET

DATE 4-14-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIPS PIPE LINE COMPANY,)
)
Plaintiff,)
)
v.)
)
DIAMOND SHAMROCK REFINING)
AND MARKETING COMPANY,)
)
Defendant.)

Case No. 92-C-315-E

FILED

APR 14 1994

Richard M. Lawler, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

In accordance with (1) the Court's Order filed March 9, 1994 (dkt. #79), (2) the parties' Stipulation As To Volume Of Barrels and Tariff Rates filed December 10, 1993 (dkt. #58), and (3) the Order and Judgment filed on July 22, 1993 (dkt. #32), the Court hereby enters judgment as follows:

1. Judgment is entered in favor of Plaintiff Phillips Pipe Line Company and against Defendant Diamond Shamrock Refining and Marketing Company in the amount of \$1,912,747.98, plus prejudgment interest thereon calculated pursuant to 18 C.F.R. §340.1(c)(2) (1993) through March 31, 1994, in the amount of \$392,059.20, plus additional prejudgment interest from and after April 1, 1994, at the rate of \$379.91 per day until the date this Judgment is entered on the Court's docket, plus costs previously taxed in this proceeding in the amount of \$3,507.15. Post-judgment interest following entry of this Judgment shall be allowed on the Judgment pursuant to 28 U.S.C. §1961.

2. Judgment is also hereby entered in favor of Plaintiff Phillips Pipe Line Company on Defendant Diamond Shamrock Refining

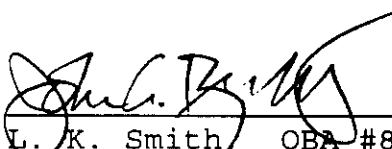
and Marketing Company's Counterclaim, denying said Defendant any recovery or declaratory relief thereon.

DATED this 13 day of April, 1994.

S/ JAMES O. ELLISON

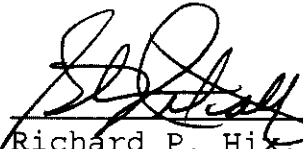
JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPROVED AS TO FORM
PURSUANT TO AGREEMENT
OF THE PARTIES DATED
April 12, 1994


L. K. Smith, OBA #8378
John A. Burkhardt, OBA #1336
Boone, Smith, Davis, Hurst
& Dickman
500 ONEOK Plaza
100 West Fifth Street
Tulsa, OK 74103
(918) 587-0000

Don L. Jemison, OBA #4639
Kenton J. Mai, OBA #013723
1260 Adams Building
Bartlesville, OK 74004
(918) 661-4743

ATTORNEYS FOR PLAINTIFF
PHILLIPS PIPE LINE COMPANY


Richard P. Hix, OBA #4241
Steven K. Metcalf, OBA #14780
Doerner, Stuart, Saunders,
Daniel, Anderson & Biolchini
320 S. Boston, Suite 500
Tulsa, OK 74103
(918) 582-1211

Bernard A. Foster, III, Esq.
Ross, Marsh & Foster
888 - 16th Street, N.W.
Suite 400
Washington, D.C. 20006

Charles Fleischer
Marsh, Fleischer & Quiggle
7700 Old Georgetown Road
Suite 800
Bethesda, Maryland 20814

ATTORNEYS FOR DEFENDANT
DIAMOND SHAMROCK REFINING
AND MARKETING COMPANY

ENTERED ON DOCKET

DATE 4-14-94

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 14 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 93-C-256-E ✓

IN RE: HARVARD TOWER
MORTGAGE CO.,

Debtor,

AMOS BAKER,

Appellant,

v.

RESOLUTION TRUST CO.,
ET AL.,

Appellees.

ORDER

On December 28, 1993, Appellant was ordered to arrange for substitute counsel or notify the court that he intends to **represent** himself within thirty days of the date of the order or the court would dismiss the **case** for failure to prosecute. Mark A. Craige has certified that the order was mailed to Appellant on January 6, 1994 and January 28, 1994. Both mailings were returned "unclaimed". Appellant has not responded.

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, this action is dismissed for failure to prosecute.

Dated this 13th day of April, 1994.


JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

4/13/94 FILED

APR 13 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA)
Plaintiff)
VS)
JERRY MORGAN)
Defendant)

Case Number: 90-CR-087-08-E

ORDER REVOKING TERM OF SUPERVISED RELEASE

Now on this 8th day of April, 1994, this cause comes on for sentencing after finding that the defendant violated his term of supervised release conditions as set out in the Superseding Petition on Supervised Release filed on March 17, 1994. The defendant is present in person and with his attorneys, John Echols and Randy Rankin. The Government is represented by Assistant United States Attorney Scott Woodward, and the United States Probation Office is represented by Ann Farley and Scott Kallenberger.

The defendant was heretofore, on April 27, 1992, sentenced in the Northern District of Oklahoma to three years probation, with the first month of supervision to be served in home confinement, following his plea of guilty to a one-count Information charging him with Misprision of a Felony, in violation of 18 U.S.C. § 4. On January 11, 1993, following a positive urinalysis, this Court modified the defendant's conditions of probation to include participation in a substance abuse program. On March 8, 1993, a Petition was filed, to be followed by a Superseding Petition filed on May 25, 1993, which alleged nineteen positive urine samples, four missed urine samples, and defendant's refusal to report for in-patient treatment at Freedom House in Tulsa, Oklahoma. The defendant's probation was revoked, and he was sentenced on June 25, 1993, to three months in the custody of the Bureau of

Prisons to be followed by a one year term of supervised release. Special conditions included two months of home detention with electronic monitoring, participation in a substance abuse program, and no employment without the prior approval of the probation office. On September 3, 1993, while incarcerated at FPC Yankton, South Dakota, the defendant completed a 40-hour drug education program.

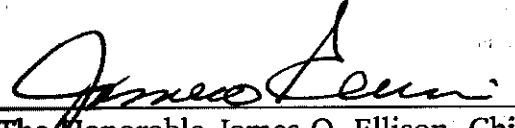
The defendant was released from FPC Yankton on September 10, 1993, to begin service of his one year term of supervised release. Continuing drug use resulted in a Petition being filed March 3, 1994, followed by a Superseding Petition being filed on March 17, 1994, which alleged four positive urine samples. The defendant was arrested March 17, 1994, and made an initial appearance before Magistrate Judge John Wagner, followed by Probable Cause and Detention Hearings on March 22, 1994. The defendant was detained pending a Revocation Hearing.

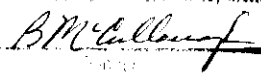
On this date a Revocation Hearing was held before this Court and the defendant stipulated to the allegations as presented in the Superseding Petition. The Court finds the defendant has violated his terms of supervised release and possessed controlled dangerous substances. Thus, pursuant to 18 U.S.C. § 3583(g), the defendant's term of supervised release is hereby revoked, and the following sentence is ordered:

It is adjudged by the Court that the defendant shall be sentenced to serve four months in the custody of the Bureau of Prisons. The Court strongly recommends that the Bureau of Prisons designate as the place of confinement an institution that offers comprehensive drug rehabilitation and treatment.

The defendant is remanded to the custody of the United States Marshal.

4/12/94
Date


The Honorable James O. Ellison, Chief
United States District Judge

United States District Court
South Dakota
By  B. M. Callahan, Clerk

SS
I hereby certify that the foregoing
is a true and correct copy of the
original.

ENTERED ON DOCKET

DATE 4-13-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DOLLAR SYSTEMS, INC., a
Delaware corporation,

Plaintiff,

vs.

No. 92-C-1118-E ✓

BLUEWATER LEASING, INC., a
Michigan corporation; JAY M.
MONTROSE, an individual; and
ROSS E. LINDSAY, an
individual,

Defendants.

FILED

APR 12 1994


Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within 30 days that settlement is not completed and further litigation is necessary.

ORDERED this 11th day of April, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE APR 13 1994

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

APR 12 1994

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

VERNELL DAVIS,

Plaintiff,

vs.

MCDONNELL DOUGLAS CORPORATION,

Defendant.

Case No. 93-C-619-B

MCDONNELL DOUGLAS CORPORATION,

Third-Party Plaintiff,

vs.

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW); and LOCAL NO.
1093 of the INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW),

Third-Party Defendants.

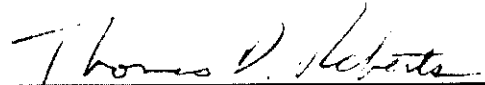
Notice of
**DISMISSAL OF ACTION AND ALL CLAIMS
AGAINST THIRD PARTY DEFENDANTS**

McDonnell Douglas Corporation, Third Party Plaintiff herein, pursuant to Federal Rule of Civil Procedure 41 (a)(1)(i), hereby dismisses this action and dismisses each and every claim it has asserted against the Third Party Defendants in this action, to wit: the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and Local 1093 of the International Union, United Automobile, Aerospace and Agricultural

Implement Workers of America. Each party is to bear his or its own costs and attorney fees.

Respectfully submitted,

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS, INC.



Thomas D. Robertson, OBA No. 7665
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-5010
(918) 584-5182

ATTORNEYS FOR DEFENDANT AND
THIRD-PARTY PLAINTIFF
MCDONNELL DOUGLAS CORPORATION

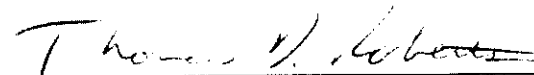
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 1994,
a true and correct copy of the above and foregoing Dismissal was
mailed, postage prepaid, to the following:

Steven Wm. Vincent, Esq.
3314 E. 51st St., Suite 201-B
Tulsa, OK 74135

Steven R. Hickman, P.C.
Frasier & Frasier
1700 Southwest Blvd., Suite 100
P. O. Box 799
Tulsa, OK 74101-0799

Jordan Rossen
General Counsel
International Union, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214



Thomas D. Robertson

ENTERED ON DOCKET
APR 12 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RODNEY C. MCCULLOUGH,
Petitioner,
vs.
RON CHAMPION, et al.,
Respondent.

No. 94-C-286-E

FILED

APR 15 1994

Richard M. Lawrence, Jr.
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.


The certificate by an authorized officer reveals that Petitioner has \$286.70 in his inmate accounts. Okla. Stat. Ann. tit. 57, § 549(A)(5) (West Supp. 1994) states that funds from an inmate's savings account may be used for fees or costs in filing a civil action. Accordingly, because Petitioner has cash and securities in his prison accounts exceeding \$200.00, Petitioner's motion for leave to proceed in forma pauperis should be denied. See Uniform Rule 8 for United States District Courts.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Petitioner's motion for leave to proceed in forma pauperis is denied.
- (2) Petitioner's application for a writ of habeas corpus is **dismissed without prejudice** at this time for failure to pay the required filing fee. See Local Rule 5.1.F. The court **may reopen** this action if Petitioner submits to the court the \$5.00 filing fee within thirty (30) days from

the date of entry of this order.

SO ORDERED THIS 4th day of April, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE APR 12 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR - 8 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WAYNE MAYFIELD,
Plaintiff,
vs.
RON CHAMPION, et al.,
Defendants.

No. 93-C-1001-B

ORDER

Before the Court is Defendants' motion to dismiss or for summary judgment filed on February 24, 1994. Plaintiff has not responded.

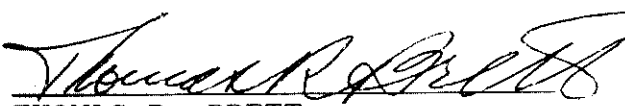
Plaintiff's failure to respond to Defendants' motion constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 7.1.C.

ACCORDINGLY, IT IS HEREBY ORDERED:

- (1) That Defendants' motion to dismiss or for summary judgment [docket #8] be **granted** and that the above captioned case be **dismissed without prejudice** at this time.
- (2) The Clerk shall **mail** an additional copy of this order to the following address because it is unclear whether the Plaintiff is still in prison.

Hilo Apartments #16
6733 E. Admiral
Tulsa, OK 74114

SO ORDERED THIS 8 day of Apr., 1994.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE

4-11-94

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIS A. JOHNSON,

Plaintiff,

vs.

RON CHAMPION, et al.,

Defendants.

No. 93-C-1056-E ✓

FILED

APR 11 1994

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Defendants' motion to dismiss or for summary judgment filed on February 24, 1994. The Plaintiff has not responded.

Although the Court realizes that Plaintiff submitted an affidavit in a similar case, Wirtz v. Champion, 93-C-970-E, that affidavit cannot be construed as a response in this case because the cases have never been consolidated. Plaintiff's failure to respond to Defendants' motion authorizes the Court to deem confessed the matters raised by the motion, and to enter the relief requested. See Local Rule 7.1.C. The Court will, thus, dismiss this case without prejudice at this time. However, if the Plaintiff submits a motion for reconsideration and a response to Defendants' motion to dismiss no later than ten days from the date of entry of this order, the Court will consider reopening this case and reinstating Defendants' motion to dismiss or for summary judgment.


ACCORDINGLY, IT IS HEREBY ORDERED:

- (1) That Defendants' motion to dismiss or for summary

judgment [docket #4] be granted and that the above captioned case be **dismissed** without prejudice at this time.

- (2) The Court may **reopen** this case if Plaintiff submits a motion for reconsideration under Fed. R. Civ. P. 59(e) and a response to Defendants' motion to dismiss or for summary judgment no later than ten (10) days from the date of entry of this order.

SO ORDERED THIS 8th day of April, 1994.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT